

**AN ANALYSIS OF THE POSSIBLE MERGER OF  
THE CITY OF WATERVLIET AND  
THE CHARTER TOWNSHIP OF WATERVLIET**



**October 2015**



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November 3, 2015

Residents, Mayor and City Commission  
City of Watervliet  
158 West Pleasant Street  
Watervliet, MI 49098

Residents, Supervisor and Township Board  
Charter Township of Watervliet  
4959 M-140  
Watervliet, MI 49098

Dear Residents and Elected Officials,

In August 2015, the City of Watervliet contracted with Municipal Analytics to undertake an evaluation of the potential for a merger of the Township and City of Watervliet. These two local governments have for a number of years shared and consolidated a variety of municipal services, and by so doing have saved taxpayers money and improved the efficiency of some government operations. In light of the history of cooperation, and in the context of restricted local revenues, the leaders of the two jurisdictions contemplated the potential benefits of merging the two governments. Grant funding from the State allowed the questions associated with a merger to be researched and analyzed. The accompanying report presents the findings of the project team's research.

This report is intended as a starting point for community dialogue on this very complex and potentially divisive issue. There is no assumption on behalf of the team, or the community leaders with whom we have worked, that merging the two jurisdictions is the right path to follow. We seek only to present answers to questions and provide an objective basis of information for conversations regarding the future of Watervliet.

Summarily, our findings are:

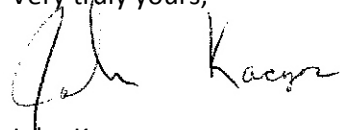
- The City and Township of Watervliet have similar population demographics
- There is a long tradition of intergovernmental cooperation; about half of each jurisdictions' services are shared
- Zoning regulations do not provide a barrier to merging
- Geographically, the Township is more than ten times the size of the City
- The City's population is about 55% of the Township population
- The downtown area of the City is the commercial center of the two communities
- The Township has a tax base that is 4.8 times that of the City
- The City's tax rate is 4.5 times the Township tax rate (considering only millages dedicated to the operations provided directly by each government)

- Both communities have ample room for growth; developments have been started and stalled in each
- The City has seen a substantial loss of employment, tax base and population, following the closing of the paper mill
- The City offers a higher level of services, including street maintenance, water treatment, public parks, 24 hour police coverage and an active DDA
- The Township has a significant number of second homes, which draws people from outside of the region to Watervliet
- The City's Charter is outdated and in need of significant modifications to improve the City's ability to provide efficient local government services
- The Township operates under the State Charter Township Act
- Completely merging the two jurisdictions can be done through two methods: **consolidation** (in which both governments dissolve and a *new city* emerges, comprised of the total area of the two territories), or **vacation of the City Charter** (in which the City "gives up" its right to govern itself, and the Township agrees to annex the territory of the City-we will use the term **unification** when discussing this method of merger)
- The process of either consolidation or unification must be initiated by voters; the process cannot be initiated or halted by elected officials in either the City or Township
- Consolidation is a substantially more time-intensive process than unification
- Given the demographics, characteristics, size and service levels of the current Township and City, we believe unification may be the more appropriate method of merging the two jurisdictions
- Voters would be able to vote (and run for office) for the leadership of the unified Township in the next regularly scheduled election
- Through unification City taxpayers would see a significant reduction in taxes, as they would pay the Township tax
- Unification would reduce the cost of government by reducing redundancies, primarily in administration costs
- The unified Township MAY be able to fund its operations with the revenue provided by the City after a merger
- State revenue sharing is substantial source of revenue for both governments; there is no guarantee that the full amount of money currently received by the City would be fully allocated to the Township
- The cost of maintaining the miles of roadway in the City may exceed the money generated by the Township's local road taxes
- The condition of some of the City's streets does not meet Township standards; City taxpayers may have to be assessed a special tax to fund investment in the streets before or in conjunction with a merger
- In a unified Township, the City's streets would be transferred to the Count Road Commission, eliminating the need to staff a local road crew
- It is not clear how service levels in the existing City would change if the Road Commission assumed responsibility for plowing, patching and maintaining signs and signals
- The City's sewer infrastructure requires significant investment; the cost of improvements would be borne by the customers served by the system
- Water rates would likely not change as a result of a merger

- If the two jurisdictions merge, decisions will have to be made about the level and cost of police services; currently, the City provides a higher level of service at a lower cost per hour than the Township, or than any comparable community in the area
- Ambulance services would have to be addressed; each community currently contracts with different providers, with different levels of service and costs
- Fire services would be unaffected, with the exception of how board members are appointed
- There would be no impact on library services as a result of unification
- Unification may provide an avenue to reducing government costs, while also addressing some major capital needs in the City, with little or no increase in costs to City taxpayers
- Further research is needed to determine the scope and cost of improving the City's roads and sewers
- The State has made additional grant funds available to continue the process of merging the City and Township of Watervliet.

We appreciate the opportunity to work on this project, and we encourage the residents of Watervliet to study and deliberate the pros and cons of merging governments.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Kaczor". The signature is written in a cursive style with a large initial "J".

John Kaczor  
Principal

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# **AN ANALYSIS OF THE POSSIBLE MERGER OF THE CITY OF WATERVLiet AND THE CHARTER TOWNSHIP OF WATERVLiet**

## **Introduction**

The City of Watervliet (hereinafter the City) and the Charter Township of Watervliet (hereinafter the Township) are geographically, economically, socially and historically connected. Located in northeastern Berrien County, these two municipalities are home to about 4,800 people. For decades the leadership of both municipalities have explored and engaged in an increasing number of cooperative services, including a recent agreement to consolidate water services. As the number of shared services continues to increase between the City and Township, local leaders have pondered the question of full unification, or a merger of the two units of government.

The State of Michigan is also interested in the idea of local government cooperation, and has made grant funds available through the Competitive Grant Assistance Program (CGAP) to encourage municipalities to explore service sharing and consolidation as a means of reducing redundancies, improving operational efficiencies and lowering the cost of government services. Given the complexity of municipal government, and the uncertainty of potential savings to taxpayers, the City, Township and State agree that a study of the potential costs and benefits of a merger would be beneficial and necessary before deciding if further steps should be taken toward unification.

In late 2013, the State approved an application by Watervliet local officials to fund an external review and evaluation of Township and City operations, with the goal of identifying the pros, cons, costs, benefits and other issues involved with a possible merger. The study was intended to be the first step in the merger process, and would provide a rational, objective inventory and reference for local leaders and citizens to evaluate whether unification of the two municipalities is worth pursuing. The proposed study was also intended to be beneficial to the City and Township if a merger is not pursued, as the report would include a range of findings related to municipal operations, opportunities for further collaboration and benchmarks for improving efficiency at many levels.

To ensure an objective and effective study, the municipalities sought a third-party evaluation of the operational, legal and financial issues to be considered in unifying the City and Township. This report provides a brief description of the two jurisdictions, an analysis of the options for change, an explanation of some of the impacts of a possible merger on municipal services, and an analysis of potential financial impacts. The report concludes with a description of two future visions of the communities: one continuing the status quo and the other representing a future involving a single jurisdiction, either the Charter Township or a new municipal entity, with authority over the entire geographic area that comprises the current City and Township.

## **Acknowledgements**

We would like to acknowledge and thank the leaders of the City and Township of Watervliet for taking the initiative to be forward-thinking with respect to exploring the option of municipal unification. It

takes trust and a willingness to break from the long-standing ways of doing business to participate in a study of this nature. Mayor David Brinker and Supervisor Dan Hutchins have developed a strong working relationship between the two governments, and have succeeded in expanding the number and benefits of a variety of cooperative agreements. In the past few years, the Township and City have signed agreements related to water assets and supply, and shared services, including enforcement of building and rental codes and zoning ordinances relating to land use. These individuals approached this study with the best interest of their constituents in mind, and an openness to objectively provide information and evaluate the findings.

Township Clerk Patt Bambrick was instrumental in supplying historical, financial, operational and election documents. She remained patient and gracious through multiple requests for information. The City Clerk, Dena Yow, and Office Manager/Commissioner, Melanie Marvin, were also very helpful in compiling records, providing requested information and answering multiple questions as they arose. Late in the study process, the newly appointed City Manager provided additional insights and information to deepen the understanding of City finances and operations.

We appreciate the input of all City and Township employees who took time to meet with us, to discuss the municipal operations and services they manage and/or perform. All of our interactions with employees were positive, informative and helpful.

Finally, as part of this study we reached out to a number of communities in southwest Michigan to collect information on municipal budgets, staffing, operations, and comparable services. We received responses from the City of Allegan, the City and Township of Coloma, City of Hartford, Lowell Township, Rutland Township and South Haven Township. The participation of these communities has allowed us to do some comparative analysis, and helped frame some of the findings and conclusions in this report.

## **Watervliet: Two Municipalities, One Community**

### **Brief History**

Initially settled in 1832, Watervliet has consistently benefited from its two primary water resources: Paw Paw Lake and the Paw Paw River. Early in the community's history, the river provided a source of power to operate a sawmill to process the vast lumber resources in the area. As forest land was cleared and agriculture developed on the open land, the sawmill closed and a paper mill opened in its place. For 168 years, the paper mill grew and became a significant source of employment for the local community, with upwards of 500 jobs at its peak. The mill was closed in 1994, and two decades later the site stands cleared and ready for development as a new County park and recreation center. When the mill closed, the City of Watervliet lost its largest taxpayer and the stability that came with being a regional employment center. Since that time, the City has lost population and tax base, but has continued to provide local government services to its citizens and businesses.

Paw Paw Lake has attracted vacationers for well over 100 years. Lakefront property has been fully developed with cottages, small hotels, summer homes and some year-round residences as well. These properties provide the largest source of tax revenue for Watervliet Township.



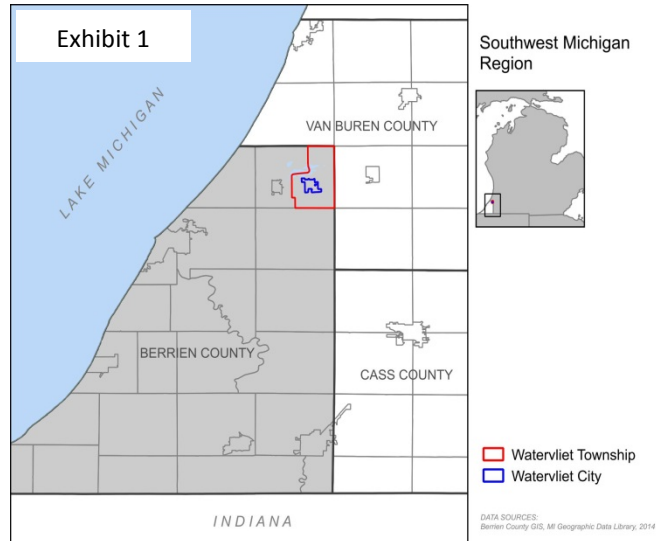
## **Geographic Location and Natural Features**

Watervliet is located in the northeast corner of Berrien County, which is located in southwest Michigan. The City is completely within the boundaries of the Township. The Township shares boundaries with Bainbridge Township to the south, Hagar Township to the north, Hartford Township to the east and Coloma Township to the west.

Paw Paw Lake, located on the western border of the Township, is the largest inland lake in southwest Michigan, and serves as a major attraction for vacationers in the summer months. The Paw Paw River flows through the Township and City.

## **Size**

The Township comprises 14.5 square miles, and has a population of about 3,102. The City is 1.2 square miles, with a population of about 1,735. The population density of the City, 1,410 people per square mile, is about 6.6 times that of the Township density of 214 per square mile. Currently, Watervliet Township is the 385<sup>th</sup> largest township in Michigan, out of 1,240 townships. The City ranks 232<sup>nd</sup> out of 276 Michigan cities. The two jurisdictions combined comprise 3.1% of the population of Berrien County.



## **Economic Base, Land Use, Planning and Zoning**

The economic center of Watervliet is downtown Watervliet City, primarily along M-140 (Main Street), which runs north-south through the Township and City. The small downtown is centrally located in the City and Township, and is home to restaurants and bars, a grocery store, hardware store, brewpub, and a variety of offices and service shops. The City's largest employers are the hospital (nearly 300 employees<sup>1</sup>) and Watervliet Public Schools (over 200 employees<sup>2</sup>).

Interstate 94 bisects the southern portion of Watervliet Township. A highway exit provides some commercial activity, including a hotel, fast food restaurants and gas stations. South of I-94 is the Township's largest employer, Lane Automotive, which currently employs 206 people, and plans to add 138 new jobs in the near future<sup>3</sup>.

Also south of the highway is a large landfill operation. The privately owned Orchard Hill Sanitary Landfill occupies over 280 acres. The location includes offices, landfill operation, a waste-to-energy plant and open space for future expansion.

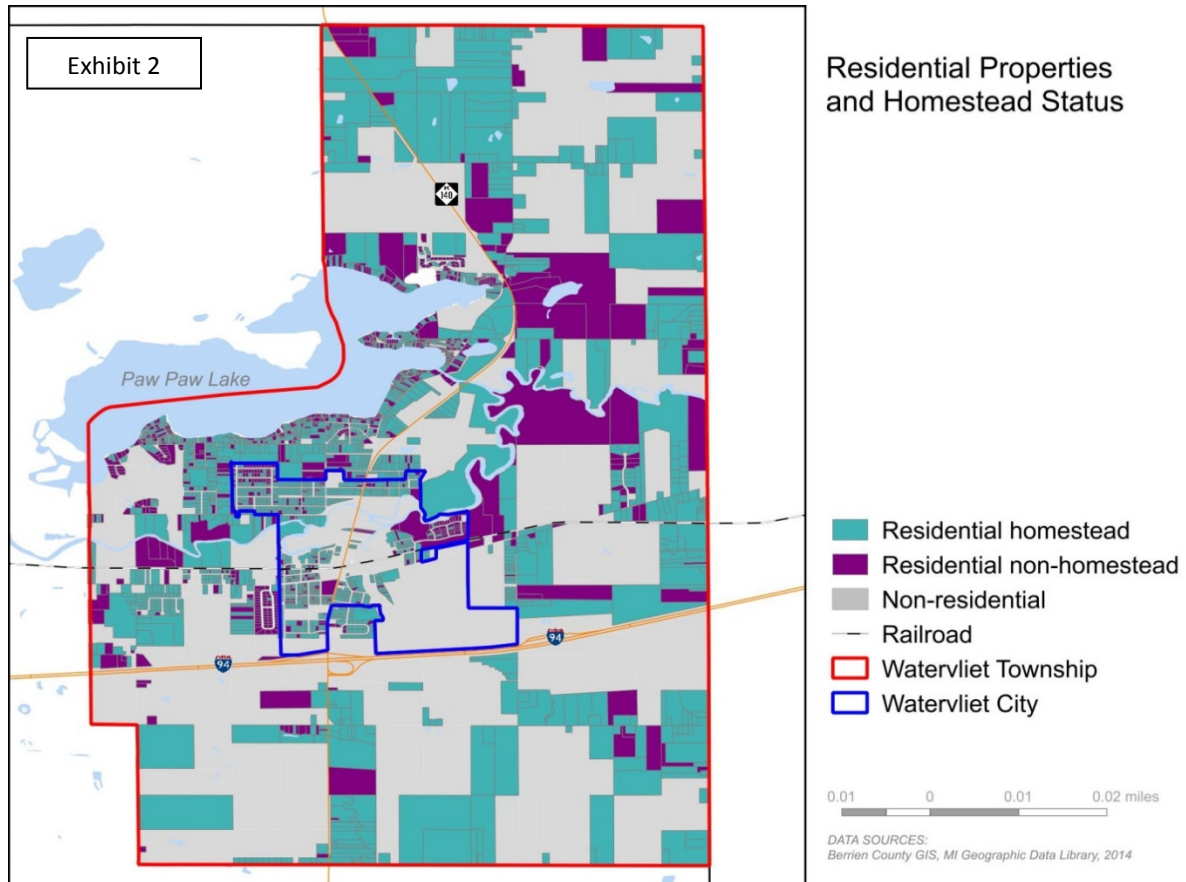
<sup>1</sup> 2013 Form 990, [https://www.citizenaudit.org/381368745/#2014\\_09\\_EO/38-1368745\\_990\\_201309.pdf](https://www.citizenaudit.org/381368745/#2014_09_EO/38-1368745_990_201309.pdf), Feb. 8, 2015

<sup>2</sup> "REP\_Summary\_Headcount-FTE\_388646\_7.xlsx," Center for Educational Performance and Information, <https://www.mischooldata.org/Other/DataFiles/StaffingInformation/HistoricalStaffingSummary.aspx>, Feb. 8, 2015.

<sup>3</sup> "Lane Automotive expansion on fast track," Andrew Lersten, *The Herald Palladium*, Jan. 20, 2015.

The Township has a fair amount of agricultural land, but residential housing provides the largest tax base for the Township, comprising 82% of total taxable value. In the City, residential property accounts for 77% of taxable value.

As illustrated in Exhibit 2, there is a high proportion of non-homestead residential property (rental housing, second homes, developer-owned residential lots) in both communities. In the City, the majority of non-homestead residential parcels are developer-owned or rental properties. The Township has a large number of non-homestead parcels along the lakeshore, suggesting many properties in this area are vacation homes and not primary residences.



Both the Township and City have numerous residential, commercial and industrial parcels ready for development. Red Arrow Highway, which runs east to west through the City and Township parallel to the interstate highway a half-mile to the south, is planned for commercial development, but it has been slow to attract new businesses. Economic opportunities exist for recreational development along the Paw Paw River, including the former site of the paper mill that once employed over 500 people.

The City and Township have similar visions and goals for their future development, as evident in their respective master plans and other community documents. There is a shared desire to control residential and commercial density, preserve single-family neighborhoods, protect the rural atmosphere of agricultural land, and encourage mixed-use development in certain areas, particularly downtown.

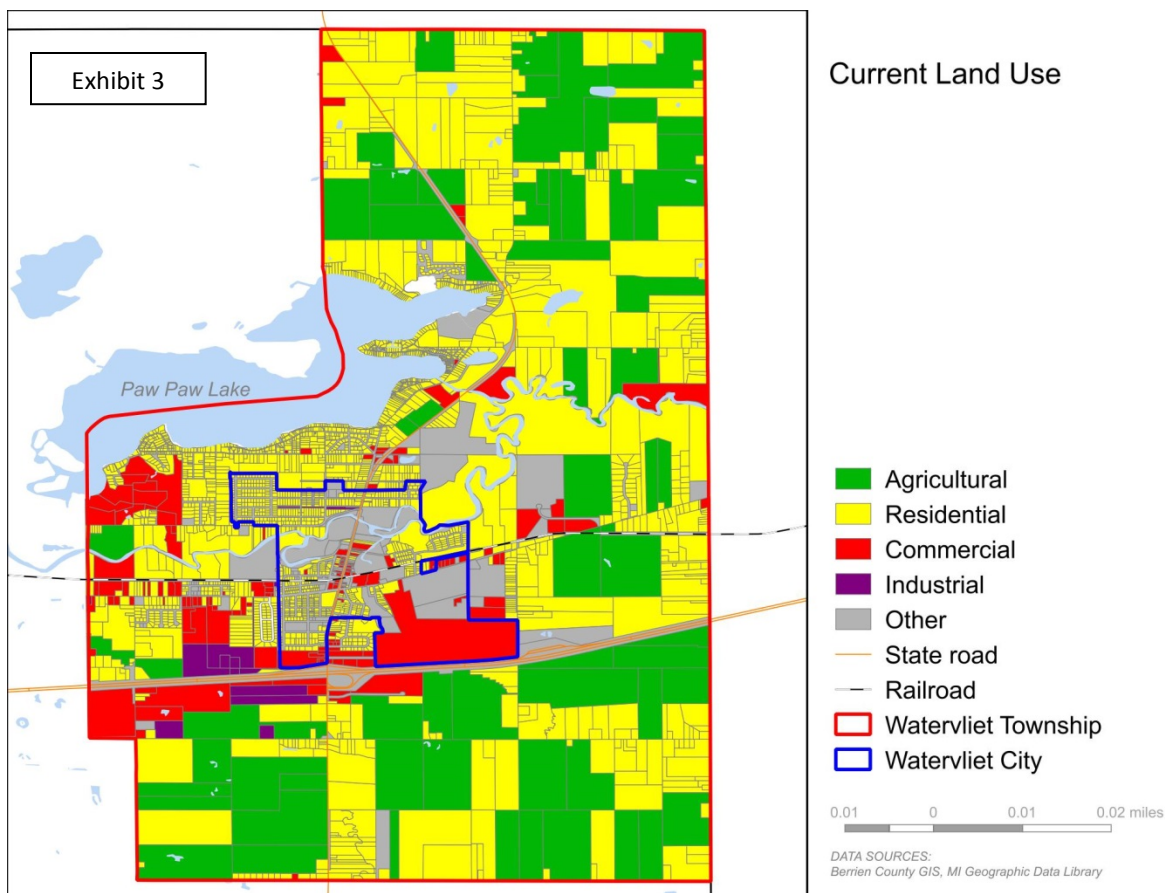
## Master Plans

The City is currently developed with a dense downtown surrounded by areas of single-family dwellings. The master plan indicates the community would like to maintain this existing small urban character. Higher density residential development is only encouraged in downtown mixed-use zones, such as above retail. There is also a desire to restrict the incursion of highway commercial development into the downtown area, maintaining a separation between the traditional downtown and highway area services.

The City's Downtown Development Authority and Chamber of Commerce are key to improving streetscapes and growing neighborhood businesses to attract commerce and pedestrian traffic, and to return investment to the local area. The improvement of walking and biking trails is also an important goal, especially along Paw Paw Lake and Paw Paw River.

The Township wishes to preserve the community's rural nature and protect single-family neighborhoods from higher density development. There is a desire to develop non-agricultural unused open space and non-productive agricultural lands. The Township encourages commercial development and streetscape improvements along M-140 and Red Arrow Highway.

Both the City and Township encourage development to remain concentrated in the downtown and adjacent to the highways, and would like to preserve the low-density character of its residential neighborhoods.



## Existing Land Use and Zoning

Covering a total of 14.5 square miles, the Township is comprised primarily of agricultural property and single-family neighborhoods (see Exhibit 3). Paw Paw Lake is surrounded by residential properties, many of which are vacation homes. Existing parkland consists of four mini-parks of 0.5 acres each, three of which have lake frontage.

The majority of the City's 1.2 square miles consists of single-family dwellings. Commercial uses are concentrated on Main Street in the city's downtown, which can be a draw for regional visitors. Existing parkland, totaling around 28 acres, is generally situated around Paw Paw River and Mill Creek, which run through the city. The largest park, Hays Park, has 13 acres of amenities including playground equipment, picnic facilities, canoe launch, and a skate park. The community hospital and former industrial land occupy a large portion of the southeast corner of the City. The public schools for both the Township and City are located within the City.

## A Common Vision

Watervliet Charter Township and the City of Watervliet share similar goals for their future development, as reflected in both community master plans. Shared visions of community growth include:

- Encouraging commercial and mixed-use growth along the downtown corridor
- Preserving the character of low-density single-family neighborhoods in both the Township and City
- Protecting rural agricultural lands
- Building a strong interconnected park and trail system are goals that can strengthen recreational capacity and attract visitors and residents alike
- The revitalization of the downtown and the rehabilitation of blighted properties
- The establishment of distinctive development types for downtown and highway-adjacent commercial development
- Improvement of park and trail systems.

## Community Demographics

Exhibit 4 summarizes some of the population characteristics of the two jurisdictions. On many

**Exhibit 4: Community Demographics**

Demographic Characteristics	City	Township	Demographic Characteristics	City	Township
2010 Population	1,735	3,102	Population 16 Years & Older	1,304	2,431
Population Over 65	241	495	In Labor Force	761	1,409
	13.9%	16.0%	Employed	669	1,205
Population Under 18	480	889	% Unemployment	7.1%	8.4%
	27.7%	28.7%	Median Household Income	\$ 42,083	\$ 41,110
Average Household Size	2.8	2.7	Per Capita Income	\$ 17,539	\$ 17,413
Median Age	35.8	42.4	% Families Earning Below Poverty Level	13.3%	13.2%
Populations Over 25	1,161	2,137	Renter-occupied Housing Units	26.7%	23.7%
Educational Attainment of Over 25 Population			Racial Composition		
Less than High School Degree	200	427	White	94.3%	90.7%
	17.2%	20.0%	Black or African American	1.0%	2.1%
High School Diploma	450	839	American Indian and Alaska Native	0.8%	0.9%
	38.8%	39.3%	Asian	0.2%	0.7%
Some college-No Degree	273	428	Other	1.0%	2.7%
	23.5%	20.0%	Two or More Races	2.7%	2.8%
College Degree (Associate - Graduate)	238	443			
	20.5%	20.7%			

Source: US Census Bureau; 2009-2013 5-Year American Community Survey

characteristics, the two communities have very similar demographics. Factors such as income, race, age or education levels can be a hurdle when merging dissimilar jurisdictions. In the case of Watervliet, there already exists a shared sense of community, so merging the City and Township would not significantly change the characteristics of people in the unified jurisdiction.

The population trend in the City since the 1990 Census has been declining, with a loss of 132 individuals, or 7% of the population. The Township, on the other hand, experienced a gain in population between 1990 and 2000 of nearly 16%, followed by a loss of 8.5% between 2000 and 2010, for a net gain of 6%, or 176 people over those two decades. The Township and City combined saw a net increase in population over the past 20 years of only 44 people, which is a change of less than 1%.

## City and Township Government

### City Government Authority

The City operates under a home rule charter as provided in Michigan law and thus has greater autonomy in developing its form of government and adopting local ordinances. The existing City Charter was initially adopted 90 years ago, on April 6, 1925. Since that time, the Charter has been amended 14 times in 8 elections by City voters, as follows:

**Exhibit 5: City Charter Revisions**

Election Date	Section Amended	Summary of Changes to Charter
4-3-1950	Ch. VII, § 1	Clarified the duties of the Mayor
4-2-1956	Ch. XX, § 7,	Authorized the City to establish, construct and maintain a public sewer system and charge for its use
	Ch. XX, § 8	Permit connection of private properties to public sewer; authorize required connection within City
4-7-1958	Ch. IV, § 10	Added Supervisor to the list of officers elected by voters
	Ch. VII, § 1	Further clarified the duties of the Mayor
	Ch. VII, § 1a	Authorized the appointment of a Deputy Clerk
	Ch. XVII, § 4	Required City finances to be audited by an independent Certified Public Accountant
11-4-1958	Ch. IV, § 13	Changed language related to compensation
11-8-1966	Ch. XV, § 16	Authorized the Commission to provide a pension plan for City employees
11-2-1976	Ch. V, § 5	Changed the deadline for submitting nominating papers from 10 to 30 days prior to the election
4-21-1981	Ch. IV, § 1	Changed date of municipal elections. See second bullet below for current Charter provision.
	Ch. IV, § 13	Changed language related to compensation (language now same as original 1925 Charter)
	Ch. IV, § 15	Established the process for filling vacancies in any elective office of the City
	Ch. XIX, § 7	Removed restrictions on the amount of special assessments, relative to a parcel's value

Source: [https://www.municode.com/library/mi/watervliet/codes/code\\_of\\_ordinances?nodeId=CHCOTA](https://www.municode.com/library/mi/watervliet/codes/code_of_ordinances?nodeId=CHCOTA), February 6, 2015

In addition to changes by a vote of the electorate, the following Charter amendments were approved by resolution of the City Commission:

- Resolution 03-2012, adopted January 18, 2012, dissolved the cemetery board, and put management and audit responsibilities under the control of the City.
- Resolution 21-2013, adopted September 10, 2013, changed the date of regular municipal elections to Election Day in November in even-numbered years.

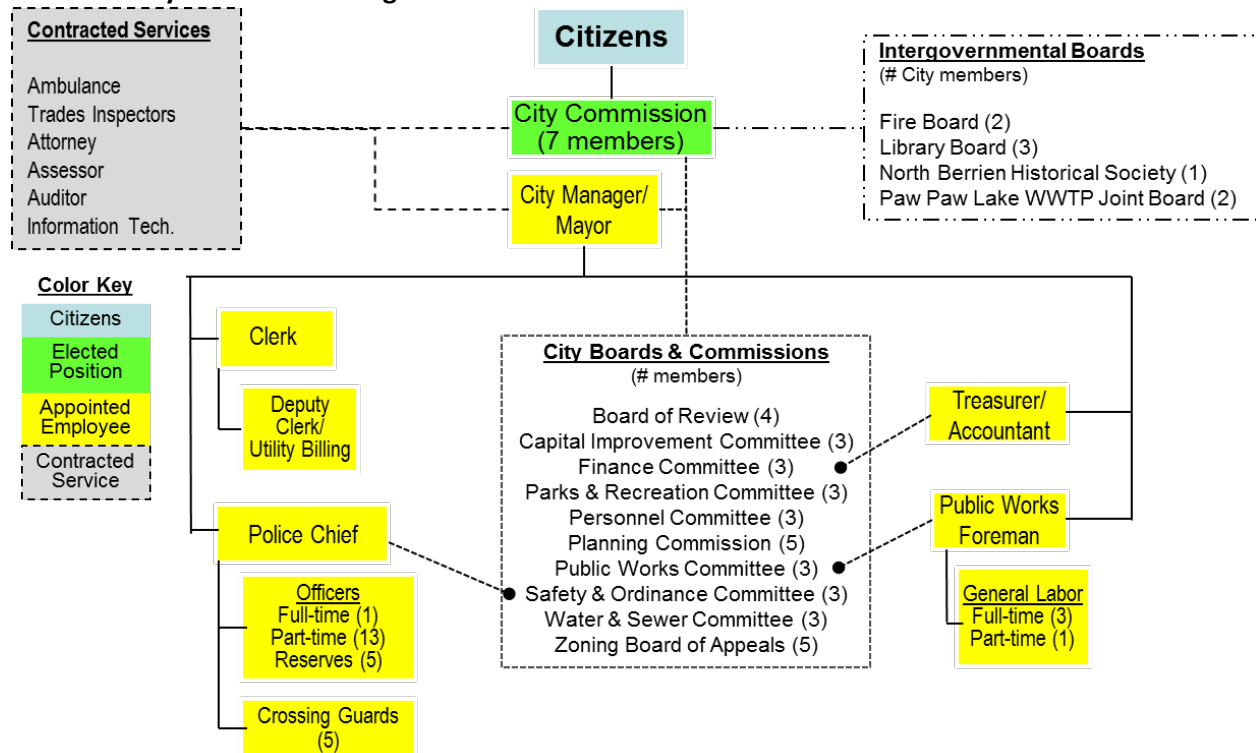
Since adoption of the original Charter, much has changed in State laws governing cities. A brief review of the current City Charter on municode.com reveals that, of the 206 sections of the Charter, 75 are either superseded or further defined by State statute. Some examples of outdated language include references to elected offices of justice of the peace, constable and a supervisor to represent the City on the County Board of Supervisors. The Charter also stipulates that the Clerk, Treasurer and Assessor are to be elected by the voters; these positions are now appointed by the Commission.

**City Organization and Management**

The City is governed by a seven member Commission, comprised of six Commissioners and a Mayor. The Mayor is the presiding officer of the Commission, and has a number of responsibilities, as outlined in the City Charter and Code of Ordinances. The City utilizes a variety of appointed committees to provide oversight of specific operational or service areas, including finance, personnel, public works, parks and recreation, capital improvement, safety and ordinance, and water and sewer.

The City’s Code of Ordinances provides for the appointment of a city manager to oversee daily operations of the City. The Code also stipulates that the Mayor, with concurrence of the majority of the Commission, may assume the city manager’s position for a period of time. The ordinance does not stipulate that the city manager position must be filled; in fact, the office of city manager can be left vacant for any period of time, as approved by the Commission.

**Exhibit 6: City of Watervliet Organizational Structure**



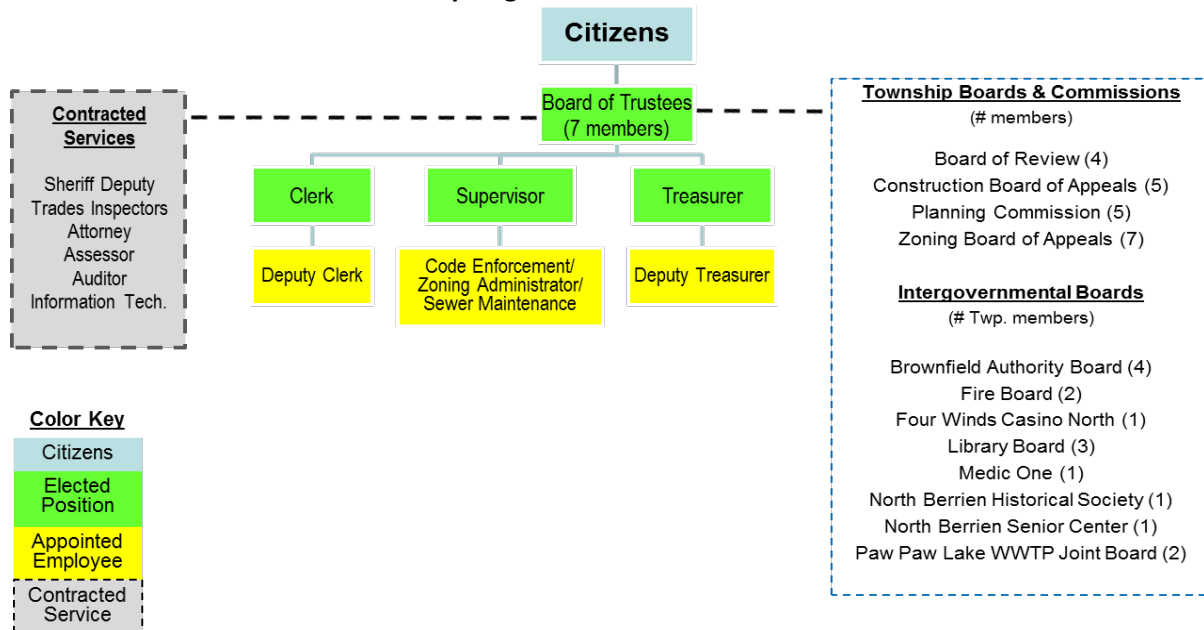
As seen in the organization chart in Exhibit 6, the City utilizes a variety of contracted services, employees, intergovernmental boards and internal boards, committees and commissions to deliver City services. City staff is comprised of nine regular full-time employees and 14 regular part-time employees. Seasonal employees, crossing guards and reserve officers are also on City payroll, but for very few hours each year.

Each operational department of the City is summarized in Appendix A. The summary includes a comparison between the City and the Township, how the operation might be impacted by a merger, and how Watervliet compares to the benchmark communities on key metrics.

### **Township Government Authority**

Watervliet Township incorporated as a charter township on December 18, 2006. In so doing, it adopted the charter that is provided for in the Charter Township Act, PA 359 of 1947, as amended. Under this arrangement, the form of government—selection of Township Board members and the scope and extent of authority—is more constrained than in the City. The Township Board is made up of three separately elected administrative offices with specific statutory authority—the Clerk, Supervisor and Treasurer—and four trustees. Collectively, these seven members make up the governing body of the Township. Similar to the City, the Township also relies on a number of boards and commissions to provide advice to the Board or to carry out specific responsibilities.

### **Exhibit 7: Watervliet Charter Township Organizational Structure**



### **Township Organization and Management**

The Township is managed by the part-time Supervisor, Clerk and Treasurer. These officials fulfill both a legislative and operational function, and have a small staff of employees to carry out day-to-day operations of the Township. Only two employees work full-time for the Township, and there are two part-time employees. The Supervisor, Treasurer and Clerk are also considered part-time, elected employees.

As can be seen by the two organization charts, the Township operates with fewer employees, and the City provides more services. For more information about how the Township and City residents are provided services, refer to Appendix A for a comparison by government function.

## Existing Cooperation between Township and City

As noted, the Township and City have a long-standing tradition of sharing services. This form of managing government services is common in smaller communities, especially in light of the struggles many municipalities have faced in recent years. A review of Watervliet Township and City services and functions reveals that about half are currently shared in some form. Exhibit 8 summarizes the cooperative efforts of these two governments at this time. A more detailed explanation of services, operations and functions is provided in Appendix B, along with a brief analysis of the impact a municipal unification would have on each.

In addition to the services and functions shared between the City and Township, each community also cooperates with other governments on services such as wastewater treatment, a regional historical society, ambulance consortium, and regional parks and recreation plan. All of these efforts demonstrate the value and effectiveness of intergovernmental service sharing.

**Exhibit 8:  
Watervliet City & Township: Shared Functions**

Shared	Separate
Airport	Ambulance
Building Inspections	Assessing
Cemetery	DDA
Fire	Economic Development
Historical Society	Financial Auditor
Library	Financial Software
Parks and Recreation	Information Technology
Planning	Legal Counsel
Rental Inspections	Police
Sewer Treatment	Public Works
Water Service	Sewer System
Zoning Administration	Streets Maintenance
	Utility Billing

## By the Numbers: Municipal Budgets, Taxes and Tax Base

### Municipal Budgets

Local governments account for their activities in a variety of ways; some account for all activities in a single fund, while others maintain a number of funds specific to certain functions or dedicated revenue sources. The City operates with 7 funds, while the Township utilizes 15 funds to account for government operations. As we look at the question of merging the Township and City, it is important to focus on the funds that will be most relevant, and to present a fair “apples to apples” evaluation of the financial impacts that could result from a unification of governments.

Toward this end, we are focusing our analysis on the primary governmental funds, and excluding special revenue funds which receive dedicated tax revenues on behalf of joint authorities or districts. The Fire Fund, Library Fund and North Berrien Historical Museum Fund in the Township are essentially “pass through” funds, and do not support Township functions. The City does not budget for these taxes, but simply collects the taxes and passes them on to the appropriate agencies. Also excluded from our analysis are the Cemetery Perpetual Care Funds in the City and Township budgets. These funds are specifically dedicated to the care of municipally owned cemeteries, and revenues cannot be used for other governmental services. Water and Sewer Funds are structured as Enterprise Funds, and are financed through rates and charges paid by customers of the utilities; these funds are excluded from our analysis, as they do not rely on general government or tax revenues. Finally, we have not included the Major Streets and Local Streets Funds in the City, because these funds receive the vast majority of revenue from State and Federal sources, and these funds would not exist if the City dissolved into the Township; in this case, the streets would become the responsibility of the County Road Commission.

The remaining funds included in our comparison of Township and City budgets include:



- City funds: General Fund, Capital Projects Fund
- Township funds: General Fund, Public Safety Fund, Police Fund, Parks and Recreation Fund, Road Fund.

When comparing these funds, the first thing we notice is that budgeted expenditures for the current fiscal year are almost identical, as seen in Exhibit 9. Township expenditures are about \$100,000 more than in the City for this group of funds.

However, when calculated as a cost per resident and per \$1,000 of taxable value, there are significant differences between the two governments. The cost of services in the City appear to be about 40%

**Exhibit 9: City & Township Tax-supported Governmental Funds**

City Tax-Supported Funds	2015-16 Budget	Township Tax-Supported Funds	2015 Budget
General Fund	\$ 822,424	General Fund	\$ 420,190
Capital Projects Fund	-	Public Safety Fund	96,396
<b>Total</b>	<b>\$ 822,424</b>	Police Fund	252,062
		Parks and Recreation Fund	2,000
		Road Fund	305,000
		<b>Total</b>	<b>\$ 1,075,648</b>
Expenditures/person	\$ 474.02	Expenditures/person	\$ 346.76
Expenditures/\$1,000 taxable value	\$ 29.38	Expenditures/\$1,000 taxable value	\$ 8.00

higher than in the township, when measured on a per population basis. A large part of this differential is based on the higher administrative costs of the City, due to more utility customers, greater accounting requirements for Act 51 funds, and the higher number of employees and their associated payroll and benefits administration costs. The taxable value metric is more disparate, with the City measuring over four times the value in the Township.

### Tax Base

Part of the differential in costs between the two budgets is the tax base. In the Township, taxable value for 2014 is \$134,389,349, while in the City taxable value totals \$27,988,536. A more meaningful way to look at this differential is one mill of property tax in the Township will generate \$134,389 of revenue, and in the City the same mill will generate only \$27,988. The tax base in the Township is 4.8 times that of the City.

### Tax Rates

Coincidentally, the tax rate in the City is 4.5 times that of the Township. Excluding millages for fire, library or historical museum, because they are not available for City or Township services, the City's levy is 19.9839 mills, and the Township's levy is 4.4412 mills. These millages are comprised of general operating and special millages, as follows:

- City:
  - General operating: 16.9389
  - Police operating: 3.0000
  - Total City levy: 19.9389
- Township:
  - General operating: 0.5952
  - Public safety: 0.3460
  - Police operating: 1.5000
  - Roads: 2.0000
  - Total Township levy: 4.4412

## **Tax Revenues**

If each community collected taxes based on the total taxable value, the tax revenues that pay for the services provided through the funds included in Exhibit 9 would be \$558,000 in the City and \$596,000 in the Township. However, the City's budget includes tax revenues of only \$522,400, and the Township budgeted \$585,757. The difference between full tax collections and budgeted revenues can be attributed to the DDA capture in the City and to estimates of taxable value that are made when both budgets are being developed.

## **Other Revenues**

Clearly, the revenue received from taxes does not fully cover the costs presented in Exhibit 9. Both governments receive revenues from other sources; the largest revenue source after taxes is State revenue sharing. Payments are made to local governments primarily based on a constitutionally guaranteed formula that distributes a portion of the State sales tax based on population and type of government. The Township receives about \$230,000 from the State using this calculation. The City's revenue sharing payment of \$212,000 includes a Constitutional payment of about \$135,000, plus another payment of \$67,000 that is based on an allocation determined each year by the State Legislature (which means it is not guaranteed to be renewed at any time).

The balance of revenues needed to balance the budgets comes from charges for services, fees, interest earnings, rentals, reimbursements, franchise fees, and a host of other smaller sources.

## **Debt and Long-term Liabilities**

An important consideration when contemplating merging two organizations is the debt and liabilities each party has. Consideration must be given to the equitable allocation of liability costs before consolidation can proceed.

As of the end of the 2014 fiscal year, the Township had no outstanding debt or other long-term liabilities.

At the end of the 2015 fiscal year, the City had a total bonded debt outstanding of \$4,841,000. The debt is backed by the full faith and credit of the City (revenue bonds) with the debt service fully funded by the Water System Fund. Additionally, the City has an outstanding obligation of \$92,558 with Berrien County for Renaissance Redevelopment Property. The obligation is non-interest bearing and is due when the associated property is ultimately sold. A liability of \$15,021 is also on the City's books, for compensated absences earned but not yet paid. This is the only liability that is associated with governmental funds; other debt and obligations have a dedicated revenue source that is not dependent on property taxes for payment.

## **Moving Beyond Sharing Services: Government Unification**

The focus of this study is on the questions related to merging the Township and City into a single governmental unit. This section of the report summarizes the possible approaches to combining Watervliet City and Watervliet Charter Township under Michigan law. We also consider the impact of a merger on government services, budgets, tax rates and other aspects of local government.

## **Options for Change**

There are two possible approaches for combining or unifying the City of Watervliet and the Charter Township of Watervliet. Each is described in general terms below.

**Option 1:** The first option involves the **dissolution of Watervliet City**, thus leaving only the Charter Township remaining with authority over the original Township boundaries including the current City. Dissolution involves disincorporation on the part of the City, a legal process that essentially involves relinquishing the City Charter.

**Option 2:** The second option would involve a **consolidation of the two jurisdictions**, with the City and the Charter Township joining together to create a new City.

Each of the approaches to combining the two units requires affirmative votes by the people in the units involved. For example, dissolution of a city requires an affirmative vote on the part of City voters—essentially Watervliet City voters agreeing to give up City status—and affirmative votes by Charter Township voters who agree to serve the residents of the former City. In the case of consolidation, or creating a new municipal jurisdiction from the two prior entities, affirmative votes would be required by voters in both the jurisdictions, Watervliet City and Watervliet Charter Township, creating a new city.

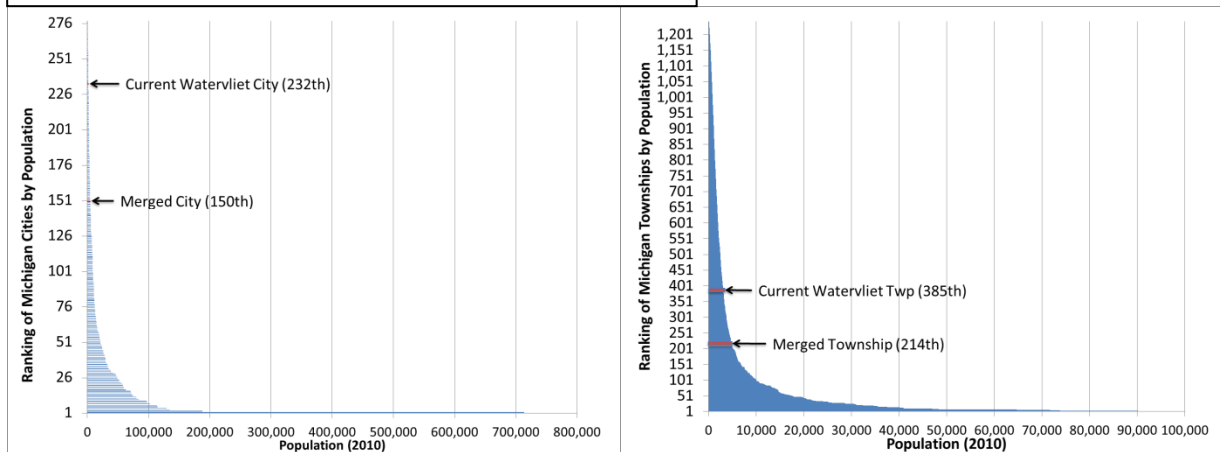
With respect to the second option, the process would involve an initial review by the State Boundary Commission, which under the law would have to rule on the sufficiency of petitions requesting incorporation of a new city and the sustainability of the jurisdiction being proposed. This process often adds time and potentially cost to the process of consolidating jurisdictions, but would pave the way for a ballot question in both the City and the Township calling for a merger. At the same time and related to that, voters in both jurisdictions would also be asked to elect a Charter Commission provided for under state statutes governing municipal incorporation if the referendum is approved in both jurisdictions.

The Charter Township, under dissolution of the City, would not be impacted in the same way; no Township ordinances would be impacted by the dissolution of the City. The effect of the dissolution would be to bring the property and residents of the former City under the jurisdiction of the Township, subject to all current Township ordinances in place at the time. In this situation, the City of Watervliet would cease to exist, and all assets, liabilities, and local government control would pass to the Township.

## **Municipal Size**

If the two Watervliet communities become a single unit, the population would be 4,837, based on 2010 Census estimates. As a new city, Watervliet would become the 150<sup>th</sup> largest city in Michigan. There are currently 126 cities with smaller populations in the state. As a new township, Watervliet would rank 214<sup>th</sup> in township populations, and would be larger than 1,026 other townships in Michigan. These rankings are presented in Exhibit 10 in chart form.

Exhibit 10: Ranking of City and Township Size in Michigan



A merged Watervliet City would be a very large city (15.7 square miles) with a low population density (308 per square mile), and a consolidated Watervliet Charter Township would have a smaller area and a fairly average population for townships in southwest Michigan, as seen in Exhibit 11.

Exhibit 11: Area and Population Comparison to Other Townships and Cities in SW Michigan

Township	Area	Population	Population Density	City	Area	Population	Population Density
Allegan Twp	31.9	4,406	138	Allegan City	4.3	4,998	1,162
Bainbridge Twp	35.4	2,850	81	Bangor City	1.9	1,885	992
Benton Charter Twp	32.8	14,749	450	Benton Harbor City	4.7	10,038	2,136
Coloma Charter Twp	19.1	5,020	263	Buchanan City	2.6	4,456	1,714
Covert Twp	35.0	2,888	83	Coloma City	0.9	1,483	1,648
Hagar Township	18.7	3,671	196	Dowagiac City	4.5	5,879	1,306
Hartford Twp	33.8	3,159	93	Hartford City	1.3	2,688	2,068
Lincoln Charter Twp	18.2	14,691	807	Kalamazoo City	25.1	74,262	2,959
Lowell Charter Twp	33.3	5,949	179	Portage City	35.2	46,292	1,315
Rutland Charter Twp	36.1	3,987	110	South Haven City	3.5	4,403	1,258
South Haven Charter Twp	17.5	3,983	228	St. Joseph City	4.8	8,365	1,743
<b>Average Select Township</b>	<b>28.3</b>	<b>5,941</b>	<b>239</b>	<b>Average Select Cities</b>	<b>8.1</b>	<b>14,977</b>	<b>1,664</b>
<b>Combined Watervliet Charter Twp</b>	<b>15.7</b>	<b>4,837</b>	<b>308</b>	<b>Combined Watervliet City</b>	<b>15.7</b>	<b>4,837</b>	<b>308</b>

## Potential Impacts of Dissolution or Consolidation

### Elected Officials and Employees

In either dissolution or consolidation, City officials would no longer hold their positions, nor would any City employees or contractors automatically be retained by the Township or the newly created municipality that emerges from consolidation. Township officials would not be impacted by a City dissolution, and the Township Board could retain those individuals as employees or contractors of the Township.

In the case of consolidation, Township officials would also give up their positions and, as with employees of the City, Township employees, albeit very few in number, would not automatically be retained by a new municipality that emerges from consolidation. Decisions about services to be provided and the

means of service delivery—whether hiring employees or securing vendors or contractors—would be the responsibility of the municipal governing board operating under a new charter.

### **Outstanding Debt and Physical Assets**

In either a dissolution or a consolidation, the process would necessitate a mechanism for allocating any debt or other obligations (legacy costs, for example) incurred by Watervliet City to those properties currently in the City boundaries. Michigan law provides the mechanism by which existing City obligations would remain the responsibility of taxpayers within the boundaries of the current City. Essentially, a special assessment district would be created, which would encompass the properties currently in the City, with a tax rate established to eliminate outstanding obligations even after dissolution or consolidation would occur.

Similarly, in either a dissolution or a consolidation, arrangements would need to be made as part of the decision process to address the use or disposal of capital assets, the physical facilities and equipment that currently belong to the City and Township. This would normally require an inventory and analysis of City and Township facilities and equipment to ascertain which are in the best shape to be used in the delivery of services by the Township following dissolution or by the new city that would emerge from consolidation.

Tax rates, as indicated in the narrative below, would also change as a product of either dissolution or consolidation. Utility rates, on the other hand, since they are not taxes, would not have to be uniform and are normally set to reflect the actual and potentially differential costs of service provided to properties in the current City as well as the current Township (at the present time only a small number of Township properties are served by the City water system). Indeed, debt related to the water and sewer utility systems would remain the obligation of the users of that system, rate-payers who get municipal water and sewer services.

### **Streets and Roads**

Under Michigan law cities and villages have responsibility for roads within their jurisdiction, while townships do not. To support this responsibility, the State of Michigan provides funding to cities and villages through a formula in Public Act 51 that takes into account road mileage within the jurisdiction. Responsibility for township roads rests with County Road Commission in which a township is located, and again the State provides funding to County Road Commissions to support this responsibility. In addition, many townships across the state devote general fund monies or levy a township road millage to contract with the County Road Commission to provide additional levels of services on township roads.

For a number of years, Watervliet Township has levied a dedicated millage to fund road services and the millage was most recently renewed by voters in August 2012, through 2015.

While the Township has levied additional funds for road improvements, the City of Watervliet has not made significant appropriations for roads beyond the funding provided by the State through Public Act 51. We should note, the evidence is pretty clear among cities across Michigan that State funding to cities and villages under Public Act 51 is not sufficient to cover road maintenance costs. As a result, there is a difference in the quality of road infrastructure between the City and the Township. Any potential merger could result in concern about saddling a consolidated government and the tax-payers with increased costs to fix and improve the quality of the roads located within the City.

To remedy the potential financial burden associated with fixing the roads, the City could issue bonds by to fund the necessary road improvements. The resulting debt would be an obligation of the current City taxpayers after a municipal merger, and the law stipulates that an ad-valorem property tax would be levied upon the properties that are currently located within the boundaries of the City to fund the annual debt-service. A study should be completed of the existing road conditions within the City to identify the potential costs of bringing the road infrastructure up to the standards of the consolidated community.

The State Legislature is currently working to identify additional funds for road improvements. It is unclear when or how much funding may become available, and the degree to which funds would be paid to local units of governments is also unknown. It is possible the City could receive some funding for local street improvements under a new funding formula, but the degree to which Watervliet City's streets could be improved will not be known for some time.

### **Other Municipal Functions**

The City and Township already rely on a number of cooperative agreements between the two jurisdictions and in some cases with jurisdictions beyond the City or Township. Those intergovernmental agreements were noticeable in the discussion of a contractual relationship to handle building and rental inspections. Such cooperative agreements are common in other areas of service delivery as the narrative below suggests. In each case, suggestions are offered for possible decisions should dissolution or consolidation occur.

### **Police, Fire and Emergency Services**

Police, fire and ambulance or emergency services are provided differently by the two jurisdictions. The City has its own police department, and utilizes a nontraditional staffing strategy that is intended to keep costs low while providing full-time coverage with highly skilled officers. The strategy involves hiring part-time officers who have retired from other agencies. There are two full-time officers on the force, including the Chief. All other officers are paid an hourly rate with no benefits. This allows the City to provide police patrols on a 24/7 basis at a relatively modest cost.

The Township, on the other hand, contracts with the Berrien County Sheriff to provide road patrol and investigative services. The Township contracts for patrol coverage 16 hours a day, five days per week. A merged unit would need to determine the most appropriate way to continue to provide police services, requiring a cost-benefit analysis of whether municipal employees or contracted deputies would be most cost effective in providing police coverage.

In the event of dissolution or consolidation, a decision could be made to extend either approach to securing police services. The Township could expand its contract with the Sheriff to provide more officers if a higher level of service were desired, or the unified municipality could choose the same strategy or expand on the current approach using contracted part-time retired police officers. As seen in the Police summary analysis on page A-1, the cost per hour of coverage in the City is currently about \$35, while the cost in the Township is about \$60 per hour. These rates are very favorable, compared to the benchmark hourly rate of \$98. Combined, the Township and City now expend about \$559,000 per year on police services. If the merged Watervliet is able to keep costs close to \$50/hour for 24/7 coverage, the total cost of police operations would be about \$437,000, which could result in a savings of \$122,000 per year.

At the Sheriff contract price of \$60/hour, full-time police patrol coverage of the merged community would be \$524,000, a savings of \$35,000 per year when compared to the joint cost of current police services. The difference between current costs and estimated costs does not factor in the level of service. Currently, the City's 1.2 square miles are patrolled with 1-2 officers per shift and the Township has no regular patrol for 8 hours a day. Under a consolidated department, there would likely be a reduction in service levels in the current City boundary area and an increase in the Township area.

Fire protection is currently provided to both the City and Township by a shared fire department providing 24/7 coverage, with almost exclusively paid-on-call firefighters, supported by a separate property tax levy of 2 mills in each community. Governance is by a Joint Fire Board, with the City and Township each appointing two members. The Fire Board cannot issue debt or act in other ways as a separate municipal entity, and the City and Township have both engaged in debt transactions to provide fire equipment.

In the event of a dissolution or consolidation, the Joint Fire Board would be eliminated. Fire-fighting could become the responsibility of the Township, or a department in a new municipal entity, or of a new standalone fire authority or Fire Board.

Presently, the Joint Fire Board is repaying a loan to the City for the purchase of a fire truck. The balance on the loan is about \$83,000. In the event of a unification, this intergovernmental loan would be transferred to the local government that replaces the City.

Emergency medical services are provided by two different vendors under contract; Pride Care serves the City while Medic One serves the Township. Under either dissolution or consolidation, a determination would need to be made as to which vendor provides the best service, and which arrangement would be most cost effective. The Township currently has an equity interest in Medic One. If the new government severs the relationship with the ambulance service, the equity would be forfeited.

### **Water and Sewer Services**

Provision of water and sewer services in the City and the Township is complicated since the services involve other jurisdictions. Under a recent Water Service Agreement, responsibility for providing municipal water and maintaining water lines rests with the City, with service provided to some areas of the Township. The Agreement reflected service rate differentials to take into account the higher costs of serving Township areas, with the rate differential to decline over a period of 20 years, at which time the rates would be uniform for all customers.

In the event of a reorganization, water system assets and companion responsibilities would need to be deeded over and assigned to the Township or the new municipal entity. A water rate study may be required since the negotiated rate differentials in the Agreement would be terminated. Beyond these possible individual rate changes, there would be no change in overall costs of the system, as the costs of water service, both capital expenses and operations, are borne by rate-payers.

Sewage treatment is the responsibility of a Joint Sewage Disposal Board that includes both the City and the Township and Coloma City and Coloma Township. Each of the four jurisdictions is responsible for sewer lines in their communities, while interceptor lines are the responsibility of the joint authority. The agreement establishing the Joint Board would need to be revised in the event of a unification of Watervliet municipalities, but there would be little anticipated change in costs. As in the case of water

services, sewage collection and treatment costs are born by users through rate charges based on water usage.

In the event of unification, an analysis of sewer infrastructure in the City and Township would need to be conducted to determine system maintenance and capital costs that should be assigned to customers on the current City vs. Township systems. Rate differentials may need to be established to take into account the higher levels of maintenance and replacement for lines serving properties in the existing City.

The availability of municipal water and sewer services across the entire jurisdiction may be attractive from an economic development standpoint, but decisions would need to be made on the basis of service costs. Obviously, rural parts of the Township would not be expecting municipal utilities, and the rate structure of such municipal operations, with rates charged on the basis of service provided, allows for that differentiation.

### **Administrative Operations**

Administrative operations of the City and the Township currently include Treasury/Finance office responsibilities as well as the elections and record-keeping responsibilities of the Clerk's office. The Finance Office in the City handles budget and revenue management responsibilities, along with maintaining payroll and benefits systems and asset inventory management. The Deputy Clerk has primary responsibility for utility billing. In the Township, payroll services are contracted, and staff share responsibilities for budget development, general ledger and cash receipting. The Deputy Treasurer is the primary position responsible for utility billing. Both City and Township currently collect property taxes and distribute appropriate revenues to other taxing jurisdictions as required by State law, and both are required under State statute to conduct an annual financial audit; both responsibilities would be exercised by a merged unit.

The Clerks in both City and Township have responsibility for handling voter registration and conducting elections in each of the jurisdictions; this involves keeping voter records current and maintaining and updating the state's qualified voter file (QVF records). In addition, each Clerk manages the records of the jurisdictions, takes and maintains minutes of governing board meetings, insures that public notice and open meetings requirements are met, and manages Freedom of Information Act requests.

Given the small size of the existing jurisdictions, there may be some scale economies associated with consolidating the Clerk's offices in the City and Township; the merged unit would have a single Clerk's Office and a single Finance Department, although in both cases the scope of responsibilities would be expanded slightly.

Property assessment, a responsibility of both the City and the Township under State statute, is carried out under contract in both jurisdictions by certified Assessors, albeit different contractors. Given a reorganization, a single vendor could be secured to provide assessing services for the Township or the new municipal entity. In a similar fashion, both the City and Township contract with different auditing firms to provide the statutorily required annual financial audit. After unification, a single vendor could be secured to provide audit services for the Township or the new municipal entity. A merged Watervliet would require only one auditor contract, which could result in a savings, depending on the number of funds to be audited in the merged government. The savings realized from a single Assessing contract would likely be minimal, as the number of parcels on the combined assessment roll would be the same as the two municipalities currently have.



Both City and Township contract for legal services, and, as with assessing and auditing, the vendors are different. Under reorganization, a single legal services provider could be secured to provide legal counsel to the Township or the new municipal entity.

### **Airport**

The Watervliet Airport is jointly owned by the City and the Township, with the Township responsible for management. Given the elimination of the City under dissolution or consolidation, the joint ownership arrangement would be terminated. The Township or the new municipal entity, to which the airport would be deeded, would become fully responsible for airport operations.

### **Watervliet DDA**

The City's Downtown Development Authority is key to improving streetscapes and growing neighborhood businesses to attract commerce and pedestrian traffic, and to return investment to the local area. The DDA in Watervliet City would continue unaffected, and existing debt obligations, if any at the time of merger, would remain obligations of the properties in the district. As a component unit of the City, the 7-member board of the DDA is currently appointed by the City Commission, and the DDA budget is subject to Commission approval. Under a merger, the Authority's Board would be subject to appointment by either the Township Board or the elected body of a new government formed through consolidation of the City and Township. Similarly, the DDA's budget would become subject to approval of the new government's legislative body.

At present, the DDA captures about \$60,000 in taxes on properties in the district. A portion of the revenue is based on the tax rate in the City. If, as a result of combining Township and City governments, the local tax rate goes down, the DDA will see a reduction in tax collections. Conversely, if local property taxes increase, the DDA could see an increase in tax revenues. The impact on DDA revenues will depend on the captured value and the new millage rate at the time of merger. Consideration should be given to DDA revenue impacts if a merger is pursued.

### **School Districts**

Since school districts are separate governmental entities, they would not be affected by the consolidation of the City and Charter Township.

### **District Library**

The Watervliet District Library is located in the City of Watervliet and is governed by an appointed board with members appointed by both the City and the Township. The library is primarily funded through two dedicated millages of 0.5 mills in both the Township and City. One of the half mills was recently approved by voters in August 2012 for a term of four years.

In 2014, Governor Snyder signed HB 5868, Public Act 570 of 2014, which provided for the continuation of a jointly operated district library in the event that the participating municipalities undergo unification. In the case of the Watervliet District Library, if a dissolution or consolidation were to occur, the existing appointees to the Library Board would complete their term and the new unified government would appoint new members upon the expiration of the term.

## **Alternative Visions for the Future**

The City of Watervliet and Watervliet Charter Township have a long and extensive history of intergovernmental cooperation. Indeed, it may be that this pattern of cooperation prompted the consideration of options for merging the two jurisdictions in the first place. Given the extensive cooperation, the argument goes, wouldn't it make sense for the City and Township to join together as one unit, either through dissolving the City Charter or merging the City and the Township into a new municipal entity, incorporating as a new city under the Home Rule City Act?

At the same time, the opposite argument can be made; given the extensive reliance on cooperative strategies to deliver services, why would the City and Township need to consolidate? They can retain their independence and autonomy as separate units, yet take advantage of the economies of scale and joint decision-making through further service sharing arrangements.

Ultimately, for the residents of the City and the Township, the decision rests on different visions of what the future might look like. These visions would take into account the nature and level of services desired by residents and the potential for future economic development. On the one hand, Township governments, authorized under the Charter Township Act, as is the case for the Charter Township of Watervliet, can provide the primary governmental services required by the state, including property assessment, tax collection and revenue distribution, and conduct of elections, as well as elective services including the provision of police and fire protection, utility operations, parks and recreation, and so on. Cities are similarly authorized to provide both primary and elective services, and both Watervliet City and Charter Township currently do so, albeit at modest levels.

The discussion that follows revolves around two alternative visions—the status quo on the one hand and the emergence of a single governmental entity governing the entire area either through an expanded Township or the creation of a new City by virtue of a merger of the current City and Township.

### **The Status Quo**

As the narrative thus far has made clear, both Watervliet City and Township currently provide modest levels of services, many of which are delivered through joint or cooperative agreements. For example, fire services are provided by an intergovernmental authority with policy established by a Joint Fire Board and funding provided by a millage in both jurisdictions; the District Library encompasses both the City and the Township and again is governed by a separate appointed Board. Building and rental inspection services in the City are provided under contract with the Township, and the City provides municipal water service to Township customers.

Police services, often the most costly of general operating expenses in local governments, are currently provided for the most part by contracted Sheriff's deputies for the Township or part-time police officers in the City. These arrangements would continue if no change were to occur, and the City and Township could explore further cooperative agreements, including police services, sewer maintenance and utility billing.

As currently structured, citizens of the Township and City may have more direct access to their elected officials, which could be considered a benefit, but can also be a challenge. Small communities often have difficulty recruiting sufficient numbers of residents to serve on the various elected and appointed boards, committees and commissions that are part of local governments. The City's organization chart

lists 43 positions on appointed boards, commissions and committees, plus seven members of the Commission. The Township has a seven member Board, and a total of 36 appointed positions on various committees.

The perception of the two communities to prospective businesses or residents is likely shaped by more regional factors, including a multi-county economic development agency with support from Berrien County government officials. Watervliet is known for its water recreation opportunities, and visitors would likely not make a distinction between Township and City boundaries. Local residents, it has been suggested, even have a difficult time identifying the boundaries between the two municipalities. Differences in local taxes, service levels and rural versus urban environment may be the primary distinguishing characteristics between the Township and City for prospective residents or businesses. Presently, the two communities compete for economic development opportunities.

Maintaining the status quo affords residents the predictability that goes along with perpetuating 90 years of cityhood and almost nine years of Charter Township status.

Having said that, the decision about dissolution or consolidation does revolve around voters' desires for their community. Does the community want to maintain primarily a rural residential lifestyle? Do voters see a future with greater downtown development, higher density housing and increased government services occurring over time? If the former, then perhaps a township form of government can best serve the larger community? If the latter, then incorporating as a new city, with its broader taxing and service authority, might be desirable.

### **Dissolution of the City, the Role of the Charter Township**

The choice of dissolving the current City Charter is a significant one since it would mean the elimination of the Mayor and City Commission and would dilute the voice of current City residents in selecting the kind and level of services they desire. The entire geographic area now encompassing Watervliet City and Township would now be governed by the Township, and operate under the Charter Township Act.

Dissolution could potentially reduce the tax rate that is currently paid by property owners in the City, although as the data above have shown it is not clear what the savings would be for City taxpayers from the dissolution of the City. Some costs may need to continue to be imposed on those properties in the current City boundaries simply to defray the debt and legacy costs that would be carried over from the City after dissolution. And, a special assessment on properties in the current City might be employed as a means for securing the higher level of road funding that might be needed to improve the road infrastructure and bring road standards in line with the larger area.

Would the current service levels provided by the Township be sufficient to satisfy the desired service levels of City residents? Does the township form of government—partisan elections, three elective administrative officers (clerk, supervisor and treasurer) and four township trustees—provide the kind of representative arrangement desired by current City residents? There is no reason to assume that current cooperative arrangements that extend beyond the present boundaries of the City or the Township would need to end, and the joint agreements that currently exist between the City and the Township could be continued under the auspices of the Township (e.g., the enforcement of the zoning ordinance and building code would now be handled by the Township across the entire jurisdiction, with fees set to cover the costs of such inspections and enforcement processes).

In thinking about the future, a critical difference between the choice of the Township as the area-wide entity as opposed to opting to incorporate a new city to govern the geographic area currently encompassed by the City and Township is the treatment of taxing authority under the separate provisions of state law governing townships and cities. Under the Charter Township Act, charter townships can levy up to 10 mills for general operations, with limited ability to levy additional mills for special purposes by vote of the people. Cities, on the other hand, are allowed to levy up to 20 mills for general operations, and can levy additional mills through a vote of the people. Neither Watervliet City nor Charter Township comes close to their operating millage cap at the present time, but this might be a future consideration on the part of area voters.

Perhaps more germane to voter's immediate choice of which change option works best—dissolution of the City or incorporation as a new city by merger of the City and Township—is the issue of road funding. As noted earlier road maintenance in Michigan townships is the responsibility of County Road Commissions, which receive state funding on the basis of road mileage in the county outside of cities and villages. Cities and villages in Michigan have responsibility for road maintenance with funding from the state. However, the evidence is pretty clear among cities across the state that state funding to cities and villages under Public Act 51 is not sufficient to cover road maintenance costs.

### **Consolidation of the City and Township into a New City**

Similar to the case of City dissolution outlined above, a merger of Watervliet City and Watervliet Charter Township through incorporation as a new city would result in one government serving the entire geographic area of the two current jurisdictions. The advantages associated with incorporating as a new city under State law are largely related to the degree of local control in determining how the government will be structured.

In drafting a city charter, residents of a community can shape the organization of the city, determining the form of government—city manager or strong mayor, for example—choosing whether governing board members are to be elected at-large or by ward or district, and deciding whether such administrative officers as a clerk or treasurer would be appointed or elected. The charter writing process also can determine the scope and extent of municipal powers of the new city, within State constitutional and statutory constraints. The charter would also establish the general operating tax levy, not to exceed 20 mills, according to current statute.

Another potential benefit of cityhood includes more local control of streets, but as we have pointed out, the funding for street maintenance provided by Act 51 is not sufficient to fully fund street maintenance in the City now. A larger city with more miles of roads would receive more State funding, but the cost of maintaining the extra miles would likely exceed the revenues gained through Act 51 payments. Cities are able to directly allocate resources to services such as plowing and patching when needed, rather than relying on the County Road Commission to make their way to the city. However, this higher level of control comes at a cost, particularly equipment, staffing, and reduced availability to address other needs when public works crews are working on streets.

### **Costs of Unification**

We have noted a number of changes that would be required if the City and Township combine into a single governmental unit, including changes to intergovernmental agreements, relocation of some government services, transferring deeds, re-bidding contracted services, modifying or terminating employment contracts, and a host of other legal, contractual and physical changes. There are potentially significant costs associated with changes at this level of magnitude. The State of Michigan, through the

Competitive Grant Assistance Program, has awarded Watervliet a grant to cover many of the costs associated with unifying the two governments, if voters approve the unification. As a result, the upfront costs that would be borne by local taxpayers would be relatively small, albeit probably not zero.

For example, if a merger takes place, the new government would likely consolidate administrative services in the newer township hall, which would leave the city hall vacant or in need of remodeling to serve a new purpose. The costs of decommissioning or reconditioning the building for alternative uses or for sale are not covered by the grant. Funds are available, however, for public participation and ballot requirements, legal work, computer system integration and upgrading the township hall to accommodate the new government. These funds will only be available if the voters of the City and Township approve ballot questions related to consolidation or dissolution.

### **Benefits of Unification**

Reducing redundancies, improving economies of scale, creating a more responsive local government, and increasing the sense of community are some of the potential benefits of merging the Township and City. Rather than two governments vying for a new development, a unified government may be able to present a stronger position to attract businesses and residents. Fewer government agencies also results in less confusion about where to go for municipal services. (Do I go to the city hall or township hall to apply for a permit? Who do I call if I see a pothole or want to complain about litter in the park?) A single access point for small community services is a more customer-oriented approach than 2 municipal halls. Consolidating through dissolution of the City would do away with a City Charter that is outdated. A merger of the two governments would allow a new charter to be crafted to meet the specific needs of the new city in the modern era. The benefits of consolidation are not all quantifiable or tied to a budget; they may simply lead to better government and a more unified sense of community.

## **Dissolution May be the Preferred Approach to Unification in Watervliet**

After consideration of the pros and cons of merging the two governments through consolidation (creation of a new city and abandonment of the existing Township and City) or dissolution (vacating the current City Charter and annexation of the City by the Township), it appears that dissolution may be the more optimal approach to unification. Some reasons include:

- The size and population of the two jurisdictions are more fitting for a rural township than a city
- The Charter Township of Watervliet is already operating; no new charter would have to be written
- Street maintenance costs are a significant burden to a city; as a township, the Road Commission is responsible for maintenance
- Townships tend to operate at a lower cost, due to more limited government services

### **Getting to Unification through Dissolution**

The Home Rule City Act is the only legislation that governs the process of dissolving a city charter. Generally speaking, the process would involve:

1. Voters in the City have to initiate the process. Dissolution cannot be initiated by local legislative bodies, such as the City Commission.

2. A petition to put the question of dissolution on the ballot must be signed by 25% of registered voters in the City.
3. The County Board of Commissioners reviews and approves the ballot initiative, and orders the question of dissolution be placed on the ballot in the next City election. Simultaneously, the Township is ordered to put a question on the ballot for the same election. Township voters would be asked if they are willing to annex the territory of the City into the Township.
4. On election day, the question of dissolution must be approved by at least 2/3 of the City voters, and the question of annexation must be approved by at least 50% of Township voters. If either ballot question fails to meet these thresholds, the measure will fail and unification will not happen.
5. If approved by voters in both jurisdictions, the process moves quickly. Unification will be effective within 32 days of the election.
6. All assets and liabilities, contracts and other obligations would transfer to the Township. Any debt that was the responsibility of the City prior to unification would be set in a special fund, and the Township would assess the former City taxpayers a millage sufficient to pay the debt obligations for the life of the debt. Township taxpayers would not be responsible for any City debt.
7. City residents would immediately be granted all rights and obligations granted to Township residents, including the ability to participate in any subsequent Township elections and run for Township Board.

A separate document has been prepared by the legal team at Kirk, Huth, Lange & Badalamenti, PLC, addressing specific questions related to the vacation of incorporation (dissolution) of the City of Watervliet. That document has been attached to this report as Appendix C.

### **Estimating the Cost of a Unified Watervliet Township**

There is a general belief that reducing the number of local governments will result in cost savings. As noted above, by eliminating redundancies in a number of operational areas, including accounting, treasury, clerk, legal, legislative and other functions, the cost of a combined government would be less than two separate governments. A more critical question in the context of merging the Township and City is, will the savings be substantial enough to operate the unified government without raising taxes in the Township?

Working together, the City, Township and consulting team developed and estimated budget for a unified Watervliet Township. The pro-forma budget takes into account the additional tax revenues the Township would receive if City parcels were taxed at current Township rates. It also includes the City's State revenue sharing receipts, and other revenues currently received by the City, which would be paid to the Township in the event of a unification. For the General Fund, revenues are estimated to increase by about \$266,000. We should note, about \$67,000 of this amount is the City's statutory revenue sharing payment, and \$138,000 is the constitutional portion of revenue sharing. Under Michigan law, constitutional revenue sharing is guaranteed. Statutory revenue sharing, on the other hand, is not guaranteed. In fact, statutory payments must be approved each year by the State legislature. This means that at some point in the future, the City or unified Township could see a reduction or elimination of this payment, as decided by the legislature.

On the expenditure side, the General Fund of a unified Township could see costs increase by about \$96,000. The largest cost increases are estimated to result from increased administration costs in the

Supervisor, Clerk, Treasurer and general office operations (about \$79,000). Smaller increases are expected in elections and assessing operations.

Beyond the General Fund, a unified Township is estimated to see increased revenues from tax collections in the Public Safety, Police and Road Funds. Additional revenue increases would be expected in the Cemetery Fund, Parks/Recreation Fund, and Building Department Fund.

These same funds are expected to see increased costs, primarily due to expanded ambulance and police services, as well as costs associated with maintaining the parkland that is currently in the City. The Township would also see increased costs for road improvements; we have assumed the costs per mile of road would be the same in the City territory as they are budgeted in the Township

Exhibit 12 summarizes the current Township budget and compares that to the estimated budget in a unified Township. Please note, we have omitted transfers between the General Fund and the Cemetery Fund, and between the Public Safety Fund and the Police Fund. This is a more accurate approach to showing true costs of Township operations, rather than double counting the revenues and expenses in two funds. Also included in this comparison is \$129,000 in additional Road Fund expenditures, due to the increased number of roads that would be in the Township.

**Exhibit 12: Comparison of Township Budget: Current vs Unified**

	Current Township Budget			Unified Township Budget Estimate		
General Fund	\$444,556	\$410,190	\$34,366	\$710,681	\$507,054	\$203,627
Public Safety Fund	46,490	42,396	4,094	58,073	54,396	3,677
Police Fund	198,600	252,062	(53,462)	246,778	311,500	(64,722)
Parks/Recreation Fund	50	2,000	(1,950)	700	52,000	(51,300)
Cemetery Fund	2,000	11,200	(9,200)	5,875	21,601	(15,726)
Road Fund	401,407	305,000	96,407	453,911	434,000	19,911
Building Department Fund	40,000	40,000	-	67,400	67,400	-
<b>Total Township Operating Funds</b>			<b>\$70,255</b>			<b>\$95,467</b>
<b>Total Operating Funds with No Statutory Revenue Sharing</b>			<b>\$70,255</b>			<b>\$28,467</b>

As illustrated in Exhibit 12, if the City dissolves and is annexed into the Township, the primary operating funds of the Township would not be negatively impacted, when considered together. Individually, each fund could be expected to see some significant variances from current budget. These estimates assume the Township will continue to receive the same revenue sharing payments as the City. As noted, the State could reduce or eliminate the statutory portion of revenue sharing in any year. If eliminated, the unified Township would lose about \$67,000, which would result in a net reduction of \$42,000 for the funds presented in Exhibit 12.

**Conclusions**

**1. The City could benefit from a Charter Revision**

The City’s Charter is 90 years old, and it contains a significant number of sections that have been made obsolete by State law over the past nine decades. The Charter appears to no longer meet the needs of a modern city, and City residents could be better served with a new Charter.

According to the Michigan Municipal League’s *Handbook for Charter Commissioners: Resource Materials for City Charter Revision*,

“When a charter becomes outdated it hinders the ability of local government to serve properly. A charter that is no longer current is one with provisions that are illegal, obsolete or missing. Changes are needed to correct misleading, unreliable or unresponsive charters.”

The Home Rule City Act provides the framework for revising a city charter. If the voters were to approve of dissolution of the City, the Charter would no longer exist; essentially the voters would dissolve the City. All provisions of the Charter and all ordinances adopted thereto would be null and void. Under this scenario, there would be no need to revise the Charter.

Alternatively, a new city that emerges from consolidation of the City and Township could also adopt ordinances that are deemed appropriate by the governing body and voters in the new municipality. Indeed, in the event of an affirmative vote to consolidate the two units, a Charter Commission would be elected by voters in the two jurisdictions to draft a new Charter. The new Charter, subject to ratification by a vote of the people, would reflect the choice of a form of government and ultimately the scope and extent of authority provided to the new municipality consistent with the state constitution and State statutes.

If the two communities decide to maintain the status quo with respect to two separate governments, the City may benefit from a new Charter, written to address the current needs of the City, and reflective of best modern practices in city governance and management. A new Charter would also be written in conformance to current State statutes governing cities, and could lay out a new and more efficient government structure.

## **2. Opportunities for Cost Savings through Additional Shared Services Agreements are Limited**

The Township and City have been successful in finding mutually beneficial approaches to sharing services, and many of these agreements have resulted in savings for taxpayers. As noted, about half of the services provided in Watervliet are done so collaboratively. The remaining services are less likely to produce measurable savings. One potential area of savings may be police operations, if the City were able to expand coverage to the Township. Depending on the structure of the agreement, the level of staffing required, availability of additional part-time officers and equipment needs, the cost savings may be in the range of \$35,000 - \$122,000 per year. It is unclear how the savings might accrue to the Township and City. Further evaluation of this prospective service sharing opportunity would be required before a determination could be made about true cost savings potential.

## **3. The City’s Public Works Department could benefit from Additional Resources**

The current approach to operating the DPW stretches staffing and equipment resources. The City’s dump trucks are used heavily, particularly in winter months, and the oldest truck is a 1979 model. The median age of dump trucks is 17 years old; the jet vector is also 17 years old. Both of these equipment categories rank the oldest of the benchmark communities surveyed. The City’s pickup trucks are about average age, compared to the benchmark. Replacing the larger equipment pieces come at a high price, but holding on to equipment that is too old can cost a substantial amount in maintenance and equipment downtime.

The staffing of the DPW, particularly with the added responsibilities of the iron removal plant, may need to be strategically realigned and possibly expanded. Now that the City has responsibility for all of the Township’s water system, the iron removal plant, and there is a need to improve sewer



maintenance efforts, this may be a good time to better define how staff are trained and assigned to various responsibilities. Adding staff will not reduce costs, but staff assigned to work on the sewer and water systems can be billed to the utilities and not increase costs to the General Fund.

Combining the Township and City into a unified township could provide an opportunity to reorganize how public services are provided in Watervliet. One major change would be the elimination of street maintenance responsibilities for the DPW, as the Road Commission would assume those responsibilities. The remaining services (water and sewer maintenance and operations, public building maintenance, parks maintenance and some downtown alley and parking lot maintenance) could be contracted, or at least most costs could be charged to enterprise funds or the DDA. If street maintenance is no longer an obligation, many of the City's larger and more expensive equipment pieces could be sold, which will reduce the cost of equipment maintenance and acquisition. The exact organization of public works would have to be determined by the Township, if a vote of unification is approved.

#### **4. Street and Sewer Maintenance Needs have to be addressed in the City**

Whether a unification moves forward or not, the City will need to address the deterioration of its infrastructure, primarily local streets and sewer mains. Undertaking an evaluation of the asset condition would be the first step to addressing the needs, followed by a cost estimation to bring the infrastructure up to a desired standard, then finally a financing and construction plan. The City would have to issue debt to pay for the improvements, as the costs are certain to be significantly more than the revenues received through Act 51 funding for streets, and the cash available in the Sewer Fund to finance utility improvements. City voters would have to approve a debt millage to raise the revenue necessary to fund the debt service payments.

In the event consolidation is not pursued, the City would need to evaluate the affordability of infrastructure investments, and decide how best to finance the improvements. A special millage sufficient to fund street improvements within the City could easily exceed ten mills.

#### **5. City Taxpayers could see a Reduction of Nearly 15.5 Mills**

After dissolution of the City and annexation into the Township, City taxpayers would pay Township taxes, which are substantially lower than City taxes. This savings could provide an avenue for issuing debt to fix the City's infrastructure needs.

If the City and Township merge, the Home Rule City Act stipulates how the City's debt would be paid through an assessment of property taxes on taxpayers within the boundaries of the current City. The financial burden of this millage on City taxpayers could be substantially mitigated through a merger. If the millage required to fund City debt obligations after a merger is less than 15.5 mills, the taxpayers of the City would see no increase in their tax rate, from current levels.

#### **6. The City may be Limited in its Ability to bring Streets up to Township Standards**

Until a thorough study is conducted of the condition and requirements to upgrade City streets, we cannot know the cost of investing in the street infrastructure. Some estimates suggest the cost could exceed \$5 million to improve the streets. As noted, the City would have to bond for such a large expense. The City is limited in its ability to issue debt, and can issue up to 10% of taxable value. This means the City could issue, at most, \$2.8 million.

In addition to this limit, there is concern that the bond market may not be willing to lend money to the City, if they know the City is about to be dissolved. For this reason, the State may be a potential source of funding for street improvements, at least until after the City and Township merge. A unified Watervliet Township would have taxing authority of close to \$16 million.

**7. A Merger could result in a Savings of \$437,000, Compared to Operating Two Municipalities**

The increased costs to the Township after unification have been estimated to be \$385,000. As noted previously, the current City budget for operations is \$822,000. The difference represents the savings that could result through unification.

**8. The First Next Step toward Unification is Deciding Whether to Pursue City Dissolution or Government Consolidation**

As discussed, there are 2 options available to merge the City and Township of Watervliet:

- Unify as a Charter Township, through the dissolution of the City, or
- Consolidate as a new city with the merger of the Township and City

These options have been discussed throughout the report. In summary, consolidating as a new city would allow the residents of the new municipality a higher level of control in deciding how their local government is to be structured, how many representatives will serve on the governing body, the maximum general purpose tax levy (up to 20 mills under State statute), and a host of other issues that could make the new government a better “fit” for the community it would serve.

Unification of the City and Township through dissolving the City of Watervliet would afford less control in how the government is structured; the Charter Township Act proscribes the structure, powers, tax authority (maximum 5 mills general purpose tax) and other variables of the government. In some ways, this approach to government consolidation presents a more streamlined and “generic” option than consolidating as a new city.

Other variables to consider include the obligation and control that cities have with respect to street maintenance. As a city, local officials have greater control of how often streets are plowed, patched, and sealed. A city can choose to perform the work itself, or contract with the County Road Commission to maintain the streets at a certain level. Townships rely on the Road Commission to clear and maintain roads, and have to accept that the Road Commission is servicing a very large area, so plows and maintenance crews may not be available in as timely a fashion as one might hope. As is the practice with Watervliet Township, there is the option of raising local funds to ensure road maintenance is performed to a higher standard than might otherwise be available if solely relying on the Road Commission’s resources.

The most appropriate form of merger of the Township and City of Watervliet appears to be unification through dissolution of the City Charter. State law requires the process of dissolution, or vacating the Charter, must be initiated by voter referendum. Citizens would have to organize, prepare the petition, collect a sufficient number of signatures, and submit a request for a vote on dissolution to the City Clerk. See Appendix C for more information about the exact steps required.

**9. Merging Governments may provide Benefits that exceed the Financial Considerations Presented Above**

Although difficult to quantify, there may be some benefits of a single government that could make voters think unification is a good idea, even if the merger does not produce significant savings. Some non-monetary benefits might include:

- A greater sense of community
- More consistent service delivery throughout the combined jurisdiction
- Improved cooperative efforts to increase economic development
- A larger pool of candidates to serve on local boards and commissions
- Less uncertainty about jurisdictional boundaries
- Greater influence at the County and State level
- One less unit of government
- Fewer intergovernmental contracts to negotiate, and fewer meetings of intergovernmental boards

In the final analysis, it is up to the citizens of Watervliet Township and City to determine how the communities will govern and provide services to their communities. Unifying governments is one option that may allow greater alignment of citizen expectations and local government service delivery.

**APPENDIX A**

**SUMMARY COMPARISON OF PRIMARY GOVERNMENT SERVICES  
AND BENCHMARK ANALYSIS**

POLICE																																																																																				
	City	Township			Combined																																																																															
<b>Delivery model</b>	City department with direct hire employees	Contracted with Sheriff			Requires decision by local policymakers																																																																															
<b>Service Level</b>	24/7 coverage provided	16 hours/day M-F			Requires decision by local policymakers																																																																															
<b>Staffing</b>	1 full-time Chief 1 full-time Officer 13 part-time Officers (no benefits)	2 full-time Sheriff Deputies			Could be provided in-house or contracted																																																																															
<b>Costs</b>	FY 2015: \$311,764 (actual) FY 2014: \$274,732 (actual) FY 2013: \$264,908 (actual)	FY 2015: \$252,600 (budget) FY 2014: \$289,441 (actual) FY 2013: \$215,298 (actual)			Depends on staffing configuration chosen. Extending the City's coverage to the Township would likely incur additional costs, but they should be below current Township costs.																																																																															
<b>Metrics</b>	Cost per resident: \$177 Cost per hour of coverage: \$35	Cost per resident: \$81 Cost per hour of coverage: \$61																																																																																		
<b>Benchmarks</b>	<ul style="list-style-type: none"> <li>Only 1 of 5 cities surveyed contracts for police services (City of Coloma contracts with Coloma Twp).</li> <li>Only 1 of 4 townships surveyed provides police services in-house (Coloma Township).</li> <li>All benchmark communities that pay for police services have 24/7 police coverage.</li> <li>Average cost per resident in benchmark communities: \$201</li> <li>Average cost per hour of coverage in benchmark communities: \$98</li> </ul>	<table border="1"> <thead> <tr> <th></th> <th>2010</th> <th></th> <th></th> <th>Annual</th> <th>Cost/Hour</th> </tr> <tr> <th>Community</th> <th>Population</th> <th>Police Budget</th> <th>Police \$/Population</th> <th>Coverage Hours</th> <th>of Police Coverage</th> </tr> </thead> <tbody> <tr> <td>Watervliet City</td> <td>1,735</td> <td>\$ 307,024</td> <td>\$ 176.96</td> <td>8,736</td> <td>\$ 35.14</td> </tr> <tr> <td>Watervliet Twp</td> <td>3,102</td> <td>\$ 252,062</td> <td>\$ 81.26</td> <td>4,160</td> <td>\$ 60.59</td> </tr> <tr> <td><b>Combined Watervliet</b></td> <td><b>4,837</b></td> <td><b>\$ 559,086</b></td> <td><b>\$ 115.59</b></td> <td><b>TBD</b></td> <td><b>TBD</b></td> </tr> <tr> <td colspan="6"><b>Benchmark Departments</b></td> </tr> <tr> <td>Coloma Twp</td> <td>5,020</td> <td>\$ 813,396</td> <td>\$ 162.03</td> <td>8,736</td> <td>\$ 93.11</td> </tr> <tr> <td>Buchanan City</td> <td>4,456</td> <td>\$ 949,985</td> <td>\$ 213.19</td> <td>8,736</td> <td>\$ 108.74</td> </tr> <tr> <td>Coloma City</td> <td>1,483</td> <td>\$ 275,202</td> <td>\$ 185.57</td> <td>8,736</td> <td>\$ 31.50</td> </tr> <tr> <td>Allegan City</td> <td>4,998</td> <td>\$ 1,373,475</td> <td>\$ 274.80</td> <td>8,736</td> <td>\$ 157.22</td> </tr> <tr> <td>Hartford City</td> <td>2,688</td> <td>\$ 385,690</td> <td>\$ 143.49</td> <td>8,736</td> <td>\$ 44.15</td> </tr> <tr> <td>Dowagiac City</td> <td>5,879</td> <td>\$ 1,346,090</td> <td>\$ 228.97</td> <td>8,736</td> <td>\$ 154.09</td> </tr> <tr> <td><b>Comparable Avg</b></td> <td><b>4,087</b></td> <td><b>\$ 857,306</b></td> <td><b>\$ 201.34</b></td> <td><b>8,736</b></td> <td><b>\$ 98.13</b></td> </tr> </tbody> </table>						2010			Annual	Cost/Hour	Community	Population	Police Budget	Police \$/Population	Coverage Hours	of Police Coverage	Watervliet City	1,735	\$ 307,024	\$ 176.96	8,736	\$ 35.14	Watervliet Twp	3,102	\$ 252,062	\$ 81.26	4,160	\$ 60.59	<b>Combined Watervliet</b>	<b>4,837</b>	<b>\$ 559,086</b>	<b>\$ 115.59</b>	<b>TBD</b>	<b>TBD</b>	<b>Benchmark Departments</b>						Coloma Twp	5,020	\$ 813,396	\$ 162.03	8,736	\$ 93.11	Buchanan City	4,456	\$ 949,985	\$ 213.19	8,736	\$ 108.74	Coloma City	1,483	\$ 275,202	\$ 185.57	8,736	\$ 31.50	Allegan City	4,998	\$ 1,373,475	\$ 274.80	8,736	\$ 157.22	Hartford City	2,688	\$ 385,690	\$ 143.49	8,736	\$ 44.15	Dowagiac City	5,879	\$ 1,346,090	\$ 228.97	8,736	\$ 154.09	<b>Comparable Avg</b>	<b>4,087</b>	<b>\$ 857,306</b>	<b>\$ 201.34</b>	<b>8,736</b>	<b>\$ 98.13</b>
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<b>Observations</b>	The cost of providing police services varies substantially, depending on staffing levels, full- or part-time officers, in-house versus contracted services, and a host of other variables. The City of Watervliet is operating very efficiently when we consider the cost per hour of coverage, and Watervliet Township's costs are below the average. The Township is the only community in the above table that provides less than 24/7 coverage.																																																																																			

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	City	Township	Combined																																																																																																																																																		
<b>Delivery model</b>	Member of Watervliet Fire Board	Member of Watervliet Fire Board	Continue Fire Board or bring in-house																																																																																																																																																		
<b>Service Level</b>	Paid on-call department operated by Joint Fire Board	Paid on-call department operated by Joint Fire Board	No change anticipated																																																																																																																																																		
<b>Staffing</b>	Primarily paid on-call firefighters Full-time Chief No City staff	Primarily paid on-call firefighters Full-time Chief No Township staff	Joint fire board would no longer exist. Could become department of new government, or restructured as a Fire Board or Fire Authority, with Bainbridge Twp and the new Watervliet.																																																																																																																																																		
<b>Costs</b>	2 mill fire levy to support Joint Fire Board	2 mill fire levy to support Joint Fire Board	No change anticipated																																																																																																																																																		
<b>Metrics</b>	Cost per population: \$32.26 Cost per square mile: \$46648 Cost per \$1,000 of taxable value: \$2.00	Cost per population: \$86.65 Cost per square mile: \$18,536 Cost per \$1,000 of taxable value: \$2.00	Cost per population: \$67.14 Cost per square mile: \$20,685 Cost per \$1,000 of taxable value: \$2.00																																																																																																																																																		
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<b>Observations</b>	While not a direct service of either Watervliet Township or City, the fire service is an important municipal operation, governed and supported jointly by the two communities. This existing cooperative effort could be dissolved with a municipal merger, and the fire department become an operating department of the new government. Costs for fire in Watervliet are currently higher on 2 measures (population and property value), compared to the benchmark communities. This suggests there may be some opportunities for savings in fire operations, but a more thorough review would be required to determine if savings are possible.																																																																																																																																																				

<b>CLERK</b>			
	<b>City</b>	<b>Township</b>	<b>Combined</b>
<b>Delivery model</b>	Appointed Clerk	Elected Clerk, required by Charter	Depends on the form of government
<b>Service Level</b>	Services available 40 hrs/week	Services available 30 hrs/week	Requires decision by local policymakers
<b>Staffing</b>	Full-time Clerk Full-time Deputy Clerk/Utility Billing	1 part-time, elected Clerk 1 part-time Deputy Clerk (18 hrs/wk)	Reduce staffing by up to two positions
<b>Costs</b>	FY 2015: \$24,125 (budget) FY 2014: \$33,118 (actual) FY 2013: \$28,197 (actual)	FY 2015: \$20,268 (budget) FY 2014: \$19,095 (actual) FY 2013: \$12,730 (actual)	Depending on staffing, may save about \$20,000 per year
<b>Metrics</b>	No measurable data available other than budgeted or actual expenditures. The City and Township charge Deputy Clerk to different departments, and there is no consistency in benchmark community budgets that would allow a reasonable comparison. Clerk duties vary widely between municipalities.		
<b>Observations</b>	<p>One of the Clerk's primary roles is maintaining official records of the government. There appear to be some challenges with records in the City, due to limited space, organization of historical records and the sheer volume of records. The City and Township could benefit from digitizing records, which can make searching and retrieving documents much easier. The City could also improve transparency by posting current meeting minutes, agendas and other documents on the City website. We recognize these suggestions require both financial and staff resources, which are limited.</p> <p>The current layout of the office at City Hall creates difficulties for both staff and citizens. The customer service window is very small, and the area for citizens to wait is extremely small. This can cause difficulties if more than one person is at the window or waiting to speak with someone at the window. The Qualified Voter File software is located on the computer closest to the window, but this is not the Clerk's computer. This arrangement is less than ideal.</p>		

ELECTIONS																																																																																																																											
	City	Township	Combined																																																																																																																								
<b>Summary</b>	1 voter precinct	1 voter precinct	2 voter precincts required																																																																																																																								
<b>Delivery model</b>	According to charter & State law	According to charter & State law	According to charter & State law																																																																																																																								
<b>Service Level</b>	As required, up to 4 times per year	As required, up to 4 times per year	As required, up to 4 times per year																																																																																																																								
<b>Staffing</b>	Full-time appointed Clerk Full-time Deputy Clerk/Utility Billing	Part-time elected Clerk Part-time Deputy Clerk	Reduce staffing by up to two positions																																																																																																																								
<b>Costs</b>	FY 2015: \$9,300 (budget) FY 2014: \$3,500 (actual) FY 2013: \$5,889 (actual)	FY 2015: \$7,960 (budget) FY 2014: \$5,678 (actual) FY 2013: \$10,886 (actual)	Some savings could be realized (only one Clerk & Deputy Clerk)																																																																																																																								
<b>Metrics</b>	Cost / registered voter (1,235): \$3.88* Voter participation: 29.01%**	Cost / registered voter (2,369): \$3.50* Voter participation: 32.21%**	At benchmark cost, elections expenditures could average about \$10,000 per year, for a savings of about \$3,000 per year over city & township combined costs.																																																																																																																								
<b>Benchmarks</b>	<ul style="list-style-type: none"> <li>Election cost/registered voter in benchmark communities is \$2.37</li> <li>Average voter participation in benchmark group is slightly better than Watervliet City or Township (34.89%)</li> </ul>	<table border="1"> <thead> <tr> <th colspan="8">Elections Expenditures</th> </tr> <tr> <th></th> <th>2013</th> <th>2014</th> <th>2-yr Avg Expenditures</th> <th>Registered Voters</th> <th>Costs per Voter</th> <th>Actual Voters</th> <th>% Voter Participation</th> </tr> </thead> <tbody> <tr> <td>Watervliet City</td> <td>\$ 5,889</td> <td>\$ 3,500</td> <td>\$ 4,695</td> <td>1,210</td> <td>\$ 3.88</td> <td>351</td> <td>29.01%</td> </tr> <tr> <td>Watervliet Twp</td> <td>\$ 10,886</td> <td>\$ 5,678</td> <td>\$ 8,282</td> <td>2,366</td> <td>\$ 3.50</td> <td>762</td> <td>32.21%</td> </tr> <tr> <td><b>Watervliet Totals</b></td> <td><b>\$ 16,775</b></td> <td><b>\$ 9,178</b></td> <td><b>\$ 12,977</b></td> <td><b>3,576</b></td> <td><b>\$ 3.63</b></td> <td><b>1,113</b></td> <td><b>31.12%</b></td> </tr> <tr> <th colspan="8">Benchmark Communities</th> </tr> <tr> <td>Coloma City</td> <td>\$ 1,873</td> <td>\$ 1,762</td> <td>\$ 1,818</td> <td>1,186</td> <td>\$ 1.53</td> <td>418</td> <td>35.24%</td> </tr> <tr> <td>Coloma Twp</td> <td>\$ 10,229</td> <td>\$ 3,027</td> <td>\$ 6,628</td> <td>4,091</td> <td>\$ 1.62</td> <td>1,445</td> <td>35.32%</td> </tr> <tr> <td>Buchanan City</td> <td>\$ 26,610</td> <td>\$ 17,863</td> <td>\$ 22,237</td> <td>3,348</td> <td>\$ 6.64</td> <td>937</td> <td>27.99%</td> </tr> <tr> <td>Allegan City</td> <td>\$ 5,924</td> <td>\$ 2,066</td> <td>\$ 3,995</td> <td>3,386</td> <td>\$ 1.18</td> <td>1,178</td> <td>34.79%</td> </tr> <tr> <td>Lowell Twp</td> <td>\$ 10,087</td> <td>\$ 2,553</td> <td>\$ 6,320</td> <td>4,594</td> <td>\$ 1.38</td> <td>2,160</td> <td>47.02%</td> </tr> <tr> <td>S Haven Twp</td> <td>\$ 1,188</td> <td>\$ 9,154</td> <td>\$ 5,171</td> <td>2,937</td> <td>\$ 1.76</td> <td>1,165</td> <td>39.67%</td> </tr> <tr> <td>Dowagiac City</td> <td>\$ 7,007</td> <td>\$ 13,634</td> <td>\$ 10,321</td> <td>4,493</td> <td>\$ 2.30</td> <td>989</td> <td>22.01%</td> </tr> <tr> <td>Hartford City</td> <td>\$ 4,964</td> <td>\$ 2,652</td> <td>\$ 3,808</td> <td>1,501</td> <td>\$ 2.54</td> <td>556</td> <td>37.04%</td> </tr> <tr> <td><b>Benchmark Averages</b></td> <td><b>\$ 8,485</b></td> <td><b>\$ 6,589</b></td> <td><b>\$ 7,537</b></td> <td></td> <td><b>\$ 2.37</b></td> <td></td> <td><b>34.89%</b></td> </tr> </tbody> </table>		Elections Expenditures									2013	2014	2-yr Avg Expenditures	Registered Voters	Costs per Voter	Actual Voters	% Voter Participation	Watervliet City	\$ 5,889	\$ 3,500	\$ 4,695	1,210	\$ 3.88	351	29.01%	Watervliet Twp	\$ 10,886	\$ 5,678	\$ 8,282	2,366	\$ 3.50	762	32.21%	<b>Watervliet Totals</b>	<b>\$ 16,775</b>	<b>\$ 9,178</b>	<b>\$ 12,977</b>	<b>3,576</b>	<b>\$ 3.63</b>	<b>1,113</b>	<b>31.12%</b>	Benchmark Communities								Coloma City	\$ 1,873	\$ 1,762	\$ 1,818	1,186	\$ 1.53	418	35.24%	Coloma Twp	\$ 10,229	\$ 3,027	\$ 6,628	4,091	\$ 1.62	1,445	35.32%	Buchanan City	\$ 26,610	\$ 17,863	\$ 22,237	3,348	\$ 6.64	937	27.99%	Allegan City	\$ 5,924	\$ 2,066	\$ 3,995	3,386	\$ 1.18	1,178	34.79%	Lowell Twp	\$ 10,087	\$ 2,553	\$ 6,320	4,594	\$ 1.38	2,160	47.02%	S Haven Twp	\$ 1,188	\$ 9,154	\$ 5,171	2,937	\$ 1.76	1,165	39.67%	Dowagiac City	\$ 7,007	\$ 13,634	\$ 10,321	4,493	\$ 2.30	989	22.01%	Hartford City	\$ 4,964	\$ 2,652	\$ 3,808	1,501	\$ 2.54	556	37.04%	<b>Benchmark Averages</b>	<b>\$ 8,485</b>	<b>\$ 6,589</b>	<b>\$ 7,537</b>		<b>\$ 2.37</b>		<b>34.89%</b>
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<b>Benchmark Averages</b>	<b>\$ 8,485</b>	<b>\$ 6,589</b>	<b>\$ 7,537</b>		<b>\$ 2.37</b>		<b>34.89%</b>																																																																																																																				
<b>Observations</b>	The City had the second lowest voter participation rate of all benchmark communities. This may suggest voter apathy or a need to improve voter awareness of election times/places, and absentee ballot options. The City and Township may be able to reduce election costs, considering all but one comparable have lower costs than either the City or Township. Under a merger or consolidation, the new government would have to operate two polling places, due to the number of registered voters (no savings on election workers, equipment, etc.)																																																																																																																										

\*Average actual expenditures FY 2013 & 2014, divided by number of registered voters in November 2014.

\*\*November 2014 general election (<http://www.electionmagic.com/archives/mi/2014/novgen/election.html>)



PUBLIC WORKS																											
	City	Township	Combined																								
<b>Summary</b>	Public works operations are notoriously difficult to compare, due to the wide range of services provided, and costs charged to a large number of funds. Our efforts have been limited to higher-level observations and measurements; a deeper evaluation of public works would require a separate study with an intense focus on this one department.																										
<b>Delivery model</b>	City employees maintain streets, iron removal plant, sewer system, water system extending into Township, parks, buildings and grounds	Roads maintained by County Road Commission. Small sewer system maintained by Twp. Parks & cemetery maintained by volunteers.	Would depend on the form of government and level of service desired. Would have to be greater than the Twp now provides.																								
<b>Service Level</b>	28 acres of parks Fully developed sewer & water systems Water tower & iron removal plant 2 cemeteries 4.12 miles major streets 7.46 miles local streets	2 acres of parks 1 cemetery Airport grounds	30 acres of parks 3 cemeteries Airport grounds Fully developed sewer & water systems Water tower & iron removal plant Possibly 39 miles of roads																								
<b>Staffing</b>	1 full-time Foreman 3 full-time General Labor 1 part-time Laborer	1 full-time employee dedicates a portion of time to sewer maintenance Staff, elected officials and volunteers assist with mowing and repairs as needed.	As a twp, DPW crew would include water/sewer operators & general labor to maintain parks & buildings. As a city, more staffing likely needed to handle street maintenance (unless city contracts for the service)																								
<b>Costs</b>	<u>2015 budget</u> Parks & Rec: \$48,700 Cemetery: \$5,900 Hall & Grounds: \$27,235 Streets: \$196,055 (\$30,255 City funds)	<u>2015 budget</u> Parks & Rec: \$2,000 Cemetery: \$11,200 Roads: \$305,000 Drains: \$2,000	How roads/streets are managed could shift costs considerably.																								
<b>Metrics</b>	<ul style="list-style-type: none"> <li>City large equipment is at least 5 years older than benchmark communities</li> <li>Twp pickups at least 4 years older than average</li> <li>DPW staff counts ranged from 0 to 11 in our benchmark survey</li> <li>Average # of DPW employees: 7</li> </ul>	<p style="text-align: center;"><b>Median Age of Major Equipment</b></p> <table border="1"> <caption>Median Age of Major Equipment Data</caption> <thead> <tr> <th>Equipment Type</th> <th>Watervliet Twp</th> <th>Watervliet City</th> <th>Allegan City</th> <th>Coloma City</th> <th>Hartford</th> </tr> </thead> <tbody> <tr> <td>Pickup</td> <td>~2005</td> <td>~2005</td> <td>~2005</td> <td>~2007</td> <td>~2012</td> </tr> <tr> <td>Dump</td> <td>~2007</td> <td>~1998</td> <td>~2002</td> <td>~2003</td> <td>~2003</td> </tr> <tr> <td>Jet Vactor</td> <td>~2005</td> <td>~1998</td> <td>~2004</td> <td>~2004</td> <td>~2006</td> </tr> </tbody> </table>		Equipment Type	Watervliet Twp	Watervliet City	Allegan City	Coloma City	Hartford	Pickup	~2005	~2005	~2005	~2007	~2012	Dump	~2007	~1998	~2002	~2003	~2003	Jet Vactor	~2005	~1998	~2004	~2004	~2006
Equipment Type	Watervliet Twp	Watervliet City	Allegan City	Coloma City	Hartford																						
Pickup	~2005	~2005	~2005	~2007	~2012																						
Dump	~2007	~1998	~2002	~2003	~2003																						
Jet Vactor	~2005	~1998	~2004	~2004	~2006																						
<b>Observations</b>	Staffing levels may be a function of public works service responsibilities & population; equipment age may be more related to ability to pay.																										

## **APPENDIX B**

### **SUMMARY OF EXISTING MUNICIPAL SERVICES ARRANGEMENTS AND POTENTIAL IMPACTS UNDER MERGER**

**CITY AND TOWNSHIP OF WATERVLIET**  
**SUMMARY OF EXISTING MUNICIPAL SERVICES ARRANGEMENTS AND POTENTIAL BUDGET IMPACTS UNDER MERGER**

Service	Shared?	Comments/Current Arrangements	Changes Required under Merger	Anticipated Financial Impact of Merger
<b>Airport</b>	Shared	Jointly owned; Township responsible for operations.	Deed airport to new government. Operations would be managed under new government.	No change
<b>Ambulance</b>	Separate	<b>City:</b> contracts with Pride Care at no cost to the City. <b>Township:</b> contracts with Medic One; pays to have an ambulance stationed in the Township. Medic One pays Twp for lease on ambulance building.	Decide which ambulance service to use. To leave Medic One, Twp would need to reach mutually agreeable terms with other members of the organization. Twp Board would need to pass a resolution and submit notice to Medic One 6 months prior to end of FY. To terminate contract with Pride Care, City needs to provide written notice to the Contractor at least 90 days prior to proposed termination date.	Leaving Medic One would result in loss of equity in service. Lease revenue paid to Twp would end. Pride Care does not charge City directly; contract with merged government would have to be negotiated. Service impacts need to be evaluated before choosing single service for merged Watervliet.
<b>Assessing</b>	Separate	Both Township and City contract for Assessing services from different vendors.	Contract with only one vendor, or directly hire in-house Assessor.	New contract cost likely to be similar to combined contracts. Cost of hiring staff dependent on number of hours, benefits and assessor level.
<b>Building Inspections</b>	Shared	Under terms of a shared service agreement, adopted in 2011, City utilizes same inspectors as Township. All fees and permits handled by Township, which pays City its portion of collected inspection fees monthly. City pays Twp \$1,400/mo for all shared services.	Shared services agreement would be voided. Inspections would be function of combined government.	Net budget impact would be zero.
<b>Cemetery</b>	Shared/Separate	Jointly owned; City responsible for operations; Township has additional separate cemetery	Deed airport to new government. Operations would be managed under new government.	No change
<b>DDA</b>	City only	Fully within City limits; encompasses economic center of City and Township. Current Development and Tax Increment Financing Plan was adopted in 2008, and will expire in 2023.	DDA would become component unit of the new government.	Impact on DDA would depend on tax rates established after merger.

Service	Shared?	Comments/Current Arrangements	Changes Required under Merger	Anticipated Financial Impact of Merger
<b>Economic Development</b>	Separate	Formerly both City and Township were part of Coloma-Watervliet Area Economic Development; Township & City have not renewed membership in recent years. DDA is a member.	New government would have to decide if it wants to become part of cooperative economic development initiative or do its own economic development.	Cost would depend on municipality's decisions regarding this service.
<b>Financial Auditor</b>	Separate	Each municipality contracts with different audit firms.	Newly formed government would need to select auditor.	Some savings would likely be realized after a merger, as only one auditor would be required.
<b>Financial Software</b>	Separate	<b>City</b> uses BS&A. <b>Township</b> uses Fund Balance.	All financial data would be merged into single software.	Initial cost of data migration. Ongoing cost should be lower, with just one vendor.
<b>Fire</b>	Shared	Joint Fire Board. Each municipality has 50% ownership. Authority supported by separate millage-not part of City or Township budget. Fire service extends into northern portion of Bainbridge Township.	Joint fire board would no longer exist. Could become department of new government, or restructured as a Fire Board or Fire Authority, with Bainbridge Twp and the new Watervliet.	No impact on government budgets expected. Existing loans between municipalities and Fire Board would be eliminated or rewritten if new Board/Authority is formed.
<b>Garbage</b>	Not a Gov't Svc	Residents contract directly with waste haulers.	None	None
<b>Historical Society</b>	Shared	The North Berrien Historical Museum is supported by a property tax millage levied in Hagar, Coloma, Watervliet and Bainbridge Townships, and the cities of Watervliet and Coloma.	Merger would have no impact on historical society.	No impact on government budgets expected.
<b>Information Technology</b>	Separate	Contracted. City & Township use different IT vendors.	Newly formed government would need to select IT vendor.	Some savings may be realized after a merger, as only one IT contract would be required.
<b>Legal Counsel</b>	Separate	Township & City contract with different attorneys for this service.	Newly formed government would need to select legal counsel.	Some savings may be realized after a merger, as only one municipal attorney contract would be required.

Service	Shared?	Comments/Current Arrangements	Changes Required under Merger	Anticipated Financial Impact of Merger
<b>Library</b>	District Library- not part of city or township	Library serves the City and Township. Supported by a 1.0 mill levy in each community. Library is governed by a Board comprised of 2 members appointed by each community.	Public Act 570 of 2014 clarifies that if a municipal merger or consolidation were to occur, the existing appointees to the Library Board would complete their term and the new consolidated government would appoint new members upon the expiration of the term.	No impact on government budgets expected.
<b>Parks and Recreation</b>	Shared Parks and Recreation Master Plan	Both municipalities are included in the North Berrien County Communities Parks and Recreation Plan (2010-2014). City and Township maintain separate parks. City has paid public works employees, while Twp uses mostly volunteer labor.	Plan would need to be revised to reflect new community. All parks would become property of new government.	Small increase in cost may occur, if Twp parks maintenance performed by paid public works employees under new government.
<b>Planning</b>	Shared Planning Secretary	The Township Zoning Administrator serves as secretary to the Planning Commission in both communities. Part of 2011 shared services agreement between the Township and City. City pays Twp \$1,400/mo for all shared services.	Shared services agreement would be voided. Inspections would be function of combined government.	Net budget impact would be zero.
<b>Police</b>	Separate	City operates its own police force (24/7/365 coverage). Township contracts with the Sheriff for road patrol services (2 officers, 80 hrs/week).	New government could maintain either in-house or contract police services.	Depending on level of service and desired and service delivery method chosen, total costs for police could increase or decrease. This study will attempt to shed more light on this important question.
<b>Public Schools</b>	Serves both communities	The Watervliet Public Schools District includes the majority of Watervliet Township and all of the City, as well as portions of Bainbridge Township and Coloma Township. Small portions of Watervliet Township lie within the Coloma and Covert School Districts.	Merger would have no impact on public schools.	No impact
<b>Public Works</b>	Separate	<b>City:</b> full service public works dept. <b>Township:</b> sewer maintenance only; Twp properties maintained by volunteers & elected officials.	See separate public works operations (parks, water, sewer, cemetery, streets).	See separate public works operations.

Service	Shared?	Comments/Current Arrangements	Changes Required under Merger	Anticipated Financial Impact of Merger
<b>Rental Inspections</b>	Shared	City contracts to utilize Township staff, under terms of 2011 shared services agreement. Township handles all paperwork, and pays City monthly for its share of inspection fees collected. City pays Twp \$1,400/mo for all shared services.	Shared services agreement would be voided. Inspections would be function of combined government.	Net budget impact would be zero.
<b>Sewer Treatment</b>	Shared	Joint Sewage Disposal Board includes cities and townships of Watervliet and Coloma. Each government responsible for their own collection system. Authority responsible for interceptors through treatment. Current contract expires 2020.	Authority bylaws and agreements would need to be changed to reflect change from 2 municipalities to one.	No financial impact anticipated.
<b>Sewer System</b>	Separate	City and Township own, operate & maintain separate sewer collection systems. Both governments agree the Township system is in better condition than the City system.	No change required in the physical collection systems. Assets would be combined in new government. Agreement would need to be reached regarding how to address the differences in system maintenance costs and added inflow & infiltration in City system.	City customers would likely need to pay for improved collection system infrastructure, to bring city system to parity with Township system. There could be a rate difference, or a special assessment district could be established mirroring the City boundaries, and property owners within the district could pay higher taxes.
<b>Streets Maintenance</b>	Separate	<b>Township</b> roads are responsibility of Road Commission. Twp levies 2 mills tax for road maintenance. Roads are generally in good condition in Twp. <b>City</b> is responsible for all streets in City, including plowing, patching, signage, drainage and repair/replacement. City relies on Act 51 funding, with occasional transfers from General Fund. City local streets are generally in fair to poor condition, while major streets are in good condition.	If new government is a township, streets/roads would become part of County road system. Government could levy local tax for streets, and may use own resources to do some maintenance and plowing. If merger results in a new city, all streets/roads would become responsibility of city. Maintenance could be done in-house or contracted to Road Commission.	Given disparity in road conditions, current city streets may need to be brought up to similar standard as township roads. This could be accomplished through a special assessment district comprising the current city boundaries. Ongoing maintenance costs would depend on who is responsible for the streets and the level of service/investment desired by the new government.

Service	Shared?	Comments/Current Arrangements	Changes Required under Merger	Anticipated Financial Impact of Merger
<b>Utility Billing</b>	Separate	Water bills handled by City in both communities. City & Township bill separately for sewer.	All utility customer data would be merged into single system.	Initial cost of data migration. Ongoing cost should be lower, with just one vendor. A third-party rate study may be required to establish appropriate rates for utility customers in combined entity, but with separate sewer systems.
<b>Water Service</b>	Shared	The 2013 Water Services Agreement between the City and Township assigned ownership and responsibility for all water services and assets to the City. Water rates charged to Township customers are 1.5 times the City rate; this rate differential is to be reduced annually for 20 years, until City and Township rates are the same. A small section of the Township (Pokagon Heights) will pay 1.25 times the City rate for 10 years, after which the multiplier will reduce in accordance with all other Township customers. The City has outstanding debt of \$2.67 million for water system improvements.	All water system assets and liabilities would be assigned to the new government. Existing bond documents would need to be revised to reflect the change in government. 2013 Water Services Agreement would be voided.	Water rates would likely be equalized between city and township customers. A rate study may be required to determine appropriate rates under new ownership structure.
<b>Zoning Administration</b>	Shared	City contracts to utilize Township staff. Part of 2011 shared services agreement between the Township and City. City pays Twp \$1,400/mo for all shared services.	Shared services agreement would be voided. Inspections would be function of combined government.	Net budget impact would be zero.

**APPENDIX C: LEGAL ANALYSIS REGARDING  
THE POSSIBLE VACATION OF INCORPORATION  
OF THE CITY OF WATERVLIET**

**NOVEMBER 2015**

**KIRK, HUTH, LANGE  
& BADALAMENTI, PLC**  
◆◆ Attorneys and Counselors ◆◆



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## **C-1: HISTORY OF VACATION OF INCORPORATION**

### **KIRK, HUTH, LANGE & BADALAMENTI, PLC** **RESEARCH MEMORANDUM**

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#### **QUESTIONS PRESENTED**

The City of Watervliet (“City”) and the Watervliet Charter Township (“Township”) are contemplating a possible merger of the two communities into a single charter township under the Home Rule City Act (“HRCA”). MCL 117.14a. Vacating the City’s incorporation will transfer the City’s territory, assets, and obligations to the Township. But the process of vacating incorporation presents significant electoral obstacles; namely, a 2/3 majority vote by the qualified electors of the City approving the vacation. From these obstacles, two questions can be gleaned:

- 1. Has any city in Michigan’s history vacated its incorporation and been annexed back to the township? Is there any precedent for what the communities are considering?**
- 2. Is there an alternative process for the communities to merge into a single charter township?**

#### **BRIEF ANSWERS**

- 1. No.** Neither a city nor a village has ever successfully vacated its incorporation by ballot, yet some have tried. Even though it used a different process under a different statute, the most pertinent example of a failed vacation is Onekama Village’s attempt in 2012. There, the voters failed to exceed a similar 2/3 majority vote requirement.<sup>1</sup>
- 2. No, absent the Legislature passing a special act to vacate the City’s incorporation.** In Michigan, municipalities have no inherent power to vacate their incorporation (i.e. disincorporate)<sup>2</sup>. All local government power derives from the Legislature. A city may vacate its incorporation only with the consent of the Legislature. Before 1949, a city vacation of incorporation required a special act by the Legislature. In 1949, however, the Legislature amended the HRCA to provide a method to vacate by voter approval. Vacating incorporation under MCL 117.14a present significant electoral obstacles, which is why other communities in similar circumstances have failed to vacate. Despite these obstacles, absent the Legislature passing a special act to vacate the City’s incorporation, MCL 117.14a is the only method available to merge the two communities into a single charter township.

#### **LAW & ANALYSIS**

- 1. No city has ever vacated its incorporation to return to the township.**

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<sup>1</sup> Citizens Research Council of Michigan, *Lessons from the Proposed Merger of Onekama Village with Onekama Township*, January 2013, Report 381.

<sup>2</sup> “Vacating incorporation” is the term used in the statute, and the most accurate term.

There appears not to be a single instance of a city vacating its incorporation under MCL 117.14a. The legislative history of MCL 117.14a indicates that the Legislature wrote the bill to provide a means to disincorporate the short-lived city of East Ann Arbor.<sup>3</sup> Even though MCL 117.14a was designed to disincorporate East Ann Arbor, East Ann Arbor was instead annexed by the city of Ann Arbor.<sup>4</sup> East Ann Arbor did not rejoin Pittsfield Township because it was urban, and it possibly desired greater government services than Pittsfield Township could offer.

The *Index to Michigan Local Acts, 1929-1990*, and various newspaper archives (including *the Detroit Free Press* and *the Detroit News*) have no mention of instances of vacation of incorporation. Other communities considered vacation, but voters decided against the proposals. For example, electors voted down proposals in 2013 when the village of Saugatuck explored joining the village of Douglas in Allegan County. That same year electors in Onekama Village and Onekama Township opposed merging by vacating the village. (Not only did the proposal fail to receive the 2/3 majority, but it failed to garner even a simple majority vote.)<sup>5</sup>

After reviewing the experiences of communities, it became apparent that it was worth investigating alternative processes to merge the communities. As explained in **Section 2** below, there is no alternative process available.

## **2. There is no alternative process for the communities to merge into a single charter township.**

### **A. Absent authorization from the legislature, Michigan prohibits municipalities to merge.**

Historically, in the debate over the division of power between the state and local governments, Michigan sided with local government.<sup>6</sup> Recently, however, Michigan has sided strongly with the state. “Municipal corporations have no inherent power. They are created by the state and derive their authority from the state.”<sup>7</sup>

Because it has no inherent power, a municipal corporation can be dissolved only by consent of the Michigan Legislature. *Cain v Brown*, 111 Mich 657 (1897). In *Cain*, the Michigan Legislature passed a special act that incorporated certain territory in the Township of Attica to form the Village of Attica.<sup>8</sup> Six years after the Legislature incorporated the Village, the majority of the resident electors voted to vacate incorporation. After the alleged vacation of incorporation, the Village failed to hold any elections for four years. Essentially, the Village ceased to exist – it

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<sup>3</sup> The history of the city of East Ann Arbor is discussed section 2B.

<sup>4</sup> See the *Ypsilanti Daily Press*, “E. Ann Arbor Has to Stay,” (April 1, 1949); the *Ann Arbor News*, “Bill Would Change EAA City Status,” (May 4, 1949); the *Ann Arbor News*, “To Be A City Or Not to Be A City,” p. 4 (May 9, 1949); the *Ann Arbor News*, “Bill Providing Vote On EAA Status Signed,” p. 17 (June 2, 1949); the *Ann Arbor News*, “Both Cities OK Annexation Of East Ann Arbor,” p. 19 (November 7, 1956).

<sup>5</sup> See Citizens Research Council of Michigan, *Lessons from the Proposed Merger of Onekama Village with Onekama Township*, January 2013, Report 381. See also House Legislative Analysis, HB 5868, February 18, 2015.

<sup>6</sup> See *People ex rel Le Roy v Hurlbut*, 24 Mich 44, 108 (Justice Cooley writing a separate opinion: “the corporators in each municipality were exercising their franchises under the protection of certain fundamental principles which no power in the state could override or disregard. The state may mould local institutions according to its views of policy or expediency; but local government is a matter of absolute right; and the state cannot take it away.”)

<sup>7</sup> *Bivens v Grand Rapids*, 443 Mich 391, 397 (1993).

<sup>8</sup> Cities and villages were originally incorporated by special acts of the state legislature. The Michigan Legislature created the City of Detroit by special act in 1808. William B. Beach and William K. Fahey, *Michigan Municipal Law* (Ann Arbor, MI: Institute of Continuing Education, 2012), ch 12 “Conflicts and Cooperation Between Local Governments,” p. 441.

went into complete hibernation. The court held that *only* the Michigan Legislature could vacate the Village’s incorporation.

“Unless otherwise specially provided by the legislature, the nature and constitution of our municipal corporations . . . are such that they can only be dissolved by the consent of the legislature. They may become inert or dormant, or their functions may be suspended, for want of officers or of inhabitants; but dissolved, when created by an act of the legislature, and once in existence, they cannot be. . . . As they can exist only by legislative sanction, so they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision.” *Id* at 661.

The *Cain* rule – municipal corporation dissolution requires Legislative authorization – applies to public entities besides municipal corporations. The *Cain* rule prohibited the city from dissolving a public transportation authority.<sup>9</sup> The *Cain* rule also applied to consolidated drain districts,<sup>10</sup> county hospitals,<sup>11</sup> and township park commissions.<sup>12</sup>

Although the *Cain* rule is old, it has never been overturned. On the contrary, recently courts have applied the rule in non-municipal corporation situations. In *Risk v Lincoln*, electors challenged township board authority to dissolve a park commission via ballot petition.<sup>13</sup> The court held that qualified electors of the township lacked the authority to dissolve the Township Park Commission because the Michigan Legislature did not delegate the authority to the electors.

In this case, the *Cain* rule applies: the City lacks inherent power to vacate incorporation. Vacation, therefore, requires the City to act with the consent of the Legislature under the procedures outlined in MCL 117.14a.

**B. Before the passage of MCL 117.14a in 1949, absent a special act of the Legislature, Michigan cities were unable to vacate incorporation.**

The original HRCA of 1909 lacked a method where a home rule city could vacate incorporation.

In 1947, electors residing in territory belonging to Pittsfield Township voted to incorporate the City of East Ann Arbor. The election was close – 210 votes favoring incorporation versus 208 votes against incorporation – and disputed.<sup>14</sup> Opponents of incorporation sought to disincorporate the young city two years later when they filed a petition with the Clerk of the Washtenaw County Board of Supervisors, which purported to annex all of the city’s territory to the township.

The Attorney General issued an opinion stating that the petition was illegal because “nothing in the [HRCA], or any other act, provides for the annexation of territory of a city to a township.”<sup>15</sup> Moreover, unlike the Fourth Class Cities Act, the HRCA did not include a section on vacation of a city’s incorporation. The Attorney General also cited the *Cain* rule.

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<sup>9</sup> OAG, No. 7003, (December 23, 1998).

<sup>10</sup> OAG, No. 6342, (February 6, 1986).

<sup>11</sup> OAG, No. 6411, (December 19, 1986).

<sup>12</sup> OAG, No. 7039, (December 9, 1999).

<sup>13</sup> 279 Mich App 389 (2008).

<sup>14</sup>The *Ann Arbor News*, “Bill Would Change EAA City Status,” May 4, 1949.

<sup>15</sup>OAG, No. 908, (March 29, 1949).

Subsequently, congressmen Joseph Warner and Lewis Christman, both of Washtenaw County, co-sponsored a bill amending the HRCA that permitted cities to disincorporate. What would become MCL 117.14a was written to disincorporate the City of East Ann Arbor. Ironically, the City of East Ann Arbor would not use MCL 117.14a when it dissolved less than a decade after its incorporation. Instead, the City of Ann Arbor annexed the City of East Ann Arbor in 1956.<sup>16</sup>

Before the Legislature enacted MCL 117.14a, incorporated municipalities – cities and villages – could have their incorporation vacated, but that required a special act from the Legislature.

Here, if the City does not use MCL 117.14a, it could still vacate by a special act of the Michigan Legislature.

### **C. Consolidation, detachment, and annexation cannot merge the communities into the Township.**

Besides “vacation of incorporation,” the HRCA includes other measures that merge municipalities; however, none of these other measures apply to our case. The HRCA includes provisions on consolidation (MCL 117.6), detachment (MCL 117.6), and annexation (MCL 117.9, MCL 117.14, and others). None of these provisions would permit the City to rejoin the Township.

“Cities may be incorporated or territory *detached* therefrom or added thereto, or *consolidation* of 2 or more cities or villages into 1 city, or of a city and 1 or more villages into 1 city, or of 1 or more cities or villages together with additional territory not included within any incorporated city or village into 1 city . . .” MCL 117.6.

#### Consolidation

The HRCA does not define the term “consolidation,” but the State Boundary Commission defines the term as the formation of a new *city* by combining a city with another municipal entity.<sup>17</sup> This definition is consistent with the meaning of the HRCA. A “consolidation” under the HRCA forms at least one city and another municipality into a new city.

Here, the City of Watervliet and the Watervliet Charter Township could not “consolidate” into a township because by definition a “consolidation” forms a new city, and not a new township.

#### Detachment

Detachment of the City’s territory will not merge the communities. “The process of detaching territory from a city implies that there will be something from which the territory is detached. Detach means the opposite of attach; it means to disunite, not to disintegrate.”<sup>18</sup> Moreover, detachment of territory refers to just that – territory. Even if the City detached *all* of

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<sup>16</sup>The *Ann Arbor News*, “Both Cities OK Annexation of East Ann Arbor,” p. 19 (November 7, 1956).

<sup>17</sup> State Boundary Commission Rule 123.1(c).

<sup>18</sup> OAG, No. 908 (March 29, 1949).

its property to the Township, the City would still exist as a legal entity. Detachment merely changes the boundaries of municipalities; detachment does not dissolve municipalities.

### Annexation

Annexation is the process of bringing land from one jurisdiction to another. While the HRCA provides for the annexation of the territory of a *township to a city*, it does not provide for the reverse. Other than at MCL 117.14a, nothing in the HRCA, or any other act, provides for the annexation territory of a *city to a township*.<sup>19</sup> In this case, the Township cannot annex the City's territory.

The City and the Township cannot use “consolidation,” “detachment,” or “annexation” to merge.

#### **D. A city cannot amend its charter to vacate its incorporation.**

Because of the electoral obstacles under MCL 117.14a, other methods to vacate were investigated. Even though none of the other methods investigated proved fruitful, one is worth documenting. The City cannot amend its charter to vacate its incorporation.

Justice Frankfurter once wrote, “statutes cannot be read intelligently if the eye is closed to considerations evidence in affiliated statutes.”<sup>20</sup> Michigan follows the statutory canon of construction of interpreting related statutes, those *in pari materia*, together “so as to give the fullest effect to each provision.”<sup>21</sup> The Michigan Legislature passed both the HRCA and the Home Rule Village Act (“HRVA”) on the same day in 1909.<sup>22</sup> The acts both address the home rule of municipalities, which the People mandated under Section 20 of the Constitution of the State of Michigan of 1908.<sup>23</sup> The HRVA and the HRCA are *in pari materia*. Thus, when a court interprets one it must consider the language of the other.

As already discussed, before 1949 the HRCA lacked a vacating incorporation provision. The Home Rule Village Act also lacked a vacating incorporating provision (and it still lacks that provision). Still, a 1929 Opinion of the Attorney General suggested that a home rule village could vacate its incorporation if its charter contained a provision for such vacation.<sup>24</sup> In that opinion, the Village of Hudsonville sought to vacate its incorporation by petition of the resident electors. In part, the Attorney General said, “until your charter is amended there is no method by which the electors may vacate the incorporation.”

On April 6, 1982 the electors of the Village of Sanford voted, by over a 2/3 majority, to disincorporate their village. Opponents of disincorporation sued to overturn the vote. The Midland County Circuit Court held that the village of Sanford could not disincorporate and

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<sup>19</sup> See MCL 117.14, “Whenever a city, village or township is annexed to a city . . .” (emphasis added). (The Township can annex City territory under MCL 117.14a, however.)

<sup>20</sup> Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539 (1949).

<sup>21</sup> *People v Cunningham*, 496 Mich 145, 154 (2014).

<sup>22</sup> See *Journal of the House of Representatives of the State of Michigan 1909*, May 18, 1909. The governor signed both bills on May 26, 1909.

<sup>23</sup> This section is also mandated in the current constitution. See Constitution of Michigan of 1963, Article VII, Section 20.

<sup>24</sup> OAG, 1929-1930, p 89 (September 25, 1928).

become part of a neighboring township because the village's charter lacked a provision to do so.<sup>25</sup>

The HRVA lacks a specific section for vacating incorporation. If a home rule village can disincorporate without an explicit provision in the HRVA, the question is whether a home rule city can disincorporate under the HRCA in the absence of MCL 117.14a. It cannot.

The HRVA contains a provision that permits disincorporation that the HRCA lacks. Section 25 of the HRVA (MCL 78.25) permits a home rule village to adopt in its charter any provision from any other law that relates to the powers of villages generally, including the General Law Village Act. Unlike the HRVA, the General Law Village Act contains a provision for a general law village to disincorporate (MCL 74.18). Thus, a home rule village is free to amend its village charter to include the General Law Village Act provision on disincorporation. In other words, home rule villages are prohibited from amending their charters to permit disincorporation by whatever means it wishes. Rather, home rule villages may disincorporate, if at all, under the General Law Village Act.

In short, although the HRCA and HRVA are *in pari materia*, the 1928 Attorney General Opinion and the Village of Sanford case are inapplicable to the matter before us in Watervliet.

### **CONCLUSION**

No city in Michigan has ever successfully vacated its incorporation. The primary reason for this is the supermajority 2/3 vote requirement. If the residents of Watervliet wish to merge their two governments together into a single township, then they must follow the process outlined in MCL 117.14a, and vacate the City's incorporation.

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<sup>25</sup> *Ironwood Daily Globe*, "Dissolution vote by village illegal," August 24, 1982. (The Midland County Circuit Court possibly has access to the actual opinion.)

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**C-2: TIME REQUIRED TO COMPLETE PROCESS  
& VOTER PARTICIPATION**

**KIRK, HUTH, LANGE & BADALAMENTI, PLC  
RESEARCH MEMORANDUM**

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**QUESTIONS PRESENTED**

1. How is the date of vacation of incorporation determined under MCL 117.14a?
2. How much time is needed from initiation to completion of the City of Watervliet vacation of incorporation process?
3. If the City dissolves into the Township, when would voters of the City be able to participate in Township elections?

**LAW & ANALYSIS**

**1. 32 days after the election at the latest.**

Under MCL 117.14a, within 30 days after the City and Township hold elections and the votes are canvassed, the Berrien County Clerk will make and certify “4 transcripts of all the proceedings in the matter” and file “2 transcripts in the office of the secretary of state and 2 copies in his own office.” On the first Thursday following the election, the several boards of election inspectors must canvass the election (i.e. certify the results) according to the law for a county canvass. MCL 117.12.<sup>1</sup> Once the Berrien County Clerk files the 4 transcripts, “the incorporation of such city shall be vacated.” Thus, since the election is on a Tuesday, the City will be vacated, at the latest, 32 days after the election.

**2. (Not including the signature collection process) three months for before vacation and several years for after vacation.**

Not including signature collection for the petition (which can take several months), the pre-vacation process will take three months. The post-vacation process will take as long as the time set forth in any instrument where the City debt was secured. The Township will create a separate fund to pay off the City debt. The process will be completed once all of the City debt is repaid. The time that will occur depends upon the repayment schedule of the City debt located in the specific instruments.<sup>2</sup>

**3. Immediately.**

MCL 117.17 provides:

“The general voting franchise of no qualified elector shall be lost because of the incorporation, annexation or consolidation process and his voting rights where last eligible shall be unimpaired by the incorporation, annexation or consolidation process.”

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<sup>1</sup> See also MCL 168.24a for the law on a county canvass.

<sup>2</sup> See “City of Watervliet Vacation of Incorporation Timeline” for more information.



When the City vacates under MCL 117.14a, the Township will annex all of the territory of the City. Therefore, the general voting franchise of City electors shall not be lost because of the annexation process. The Township will be required to accept City voter identification cards. Article 2, §1 of the Michigan Constitution states that the “legislature shall define residence for voting purposes.” The Legislature has met this burden by enacting MCL 168.10, which defines a “qualified elector” as “any person who possesses the qualifications of an elector prescribed in section 1 of article 2 of the state constitution *and who has resided in the city or township for 30 days.*”<sup>3</sup> (Emphasis added.) The issue is whether vacation of the City changes the residence of the City electors. Qualified electors of the City will not be changing their physical address due to the City’s vacation. Their street number and street name will remain the same. Moreover, MCL 117.17 expressly protects the general voting franchise of qualified electors during annexations. While an argument can be made that City qualified electors must wait 30 days to vote in Township elections, the best position is that qualified electors residing in the City are immediately eligible to vote in Township elections. Nevertheless, to preclude potential confusion regarding voter eligibility, upon the City’s vacation of incorporation, the Township Clerk should issue “corrected voter identification cards to the qualified voters who resided in the City.”<sup>4</sup>

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<sup>3</sup> See the memo “The Meaning of ‘Qualified Electors’ and ‘Registered Electors.’”

<sup>4</sup> MCL 168.499

## City of Watervliet Vacation of Incorporation Timeline

Task	Hypothetical Date	Description
<b>Signature Collection</b>	8/8/2016	Before August 9, 2016, 25% of all registered electors of the City of Watervliet must sign a petition praying that the incorporation of the City be vacated. The petition must be filed with the City Clerk and addressed to the Berrien County Board of Commissioners. MCL 117.14a.
<b>Verify &amp; Refer Petition</b>	8/9/2016	The City Clerk must check the signatures of the petition to determine their genuineness and sufficiency. The City Clerk must then refer the petition to the County Clerk by August 9, 2016, which is at least 30 days before the last available Berrien County Board of Commissioners meeting. (The last available Berrien County Board of Commissioners meeting needs to be at least 60 days before the election.) MCL 117.14a.
<b>Resolution</b>	9/8/2016	The Berrien County Board of Commissioners will examine the petition and determine whether it complies with the requirements of the Home Rule City Act and whether the statements contained in the petition are correct. If the majority of the Board decides both issues in the positive, then it will pass a resolution making the proposed vacation of incorporation to be submitted to the qualified electors of the Watervliet Township and the City of Watervliet. MCL 117.8(1).
<b>Transmittal of Resolution &amp; Petition</b>	9/12/2016	Within three days after the Board of Commissioners passes its resolution, the County Clerk must transmit the certified resolution to the Township Clerk and to the City Clerk. MCL 117.10.
<b>Publication</b>	10/11/2016	The Township Clerk and the City Clerk must publish the date and the purpose of the election in one or more newspapers published within the Township and the City. The Clerks must publish this notice of the election at least once a week for at least 4 weeks preceding the election. (I.e. 10/11/16, 10/18/16, 10/25/16, and 11/1/16). MCL 117.10.
<b>Posting Notice</b>	10/28/2016	The Township and City Clerks must post the same notice that was published in the newspaper in at least 10 public places at least 10 days before the election. MCL 117.10. See MCL 168.13 for information regarding counting days for time limits.
<b>ELECTION DAY</b>	11/8/2016	For the City to be vacated, both a 2/3 majority of the qualified electors of the City must vote in favor of vacation of incorporation AND a simple majority of the qualified electors of the Township must vote in favor of annexation. MCL 117.14a.
<b>Certify Election Results</b>	11/10/2016	On the first Thursday following the election, the several boards of election inspectors must canvass the election (i.e. certify the results) according to the law for a county canvass. MCL 117.12. See also MCL 168.24a for the law on a county canvass.
<b>City Vacated</b>	12/10/2016	Within 30 days after the canvass of such votes (either 12/10/2016 or 12/8/2016, the statute is ambiguous), the Berrien County Clerk must make and certify 4 transcripts of all the proceedings in the matter. The County Clerk must file two of the transcripts with the office of the Secretary of State. The other two transcripts the County Clerk must file the two copies in the County Clerk's office. Once the County Clerk files the four transcripts the City of Watervliet will be vacated and its territory will be annexed to the Township. The assets of the City, which have not been set aside or encumbered by the City for the payment of debt, becomes the property of the Township. MCL 117.14a.
<b>Deposit City Books</b>	12/15/2016	Upon vacation of incorporation of the City (i.e. shortly after; perhaps a couple of days after), the City Officers must deposit all books, papers, records and files pertaining to the City, which are in their custody, with the County Clerk for safekeeping and reference. MCL 117.14a.
<b>Statement of Debt &amp; Accounting of Money</b>	12/16/2016	The City Clerk must certify to the Berrien County Board of Commissioners both a statement of all outstanding City debt and an accounting of all moneys on hand for the payment of such debt. (Date is approximate. Shortly after vacation of incorporation). MCL 117.14a.
<b>Resolution on Debt &amp; Tax</b>	12/29/2016	The Berrien County Board of Commissioners examines the statement of debt and the accounting of money that the City Clerk submitted. The Board of Commissioners passes a resolution authorizing the consolidated Township to assess and collect taxes from the territory of the former-City in accordance with the conditions set forth by the City's bonds or other debt instruments. MCL 117.14a.
<b>City Debt Assessed &amp; Collected</b>	1/2/2017	Other than for indebtedness that falls due at a specific time, the consolidated Township Supervisor must assess, levy, and collect the former-City debt within one year of from the date of vacation of incorporation. The taxes must be collected as other taxes. The consolidated Township Supervisor must place the former-City taxes in a separate fund. The consolidated Township Supervisor must comply with the Board of Commissioners' resolution on the City tax collection. For the payment of City debt, the area of the former-City is treated as a de facto City. MCL 117.14a.

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**C-4: THE MEANING OF “QUALIFIED ELECTORS”  
& “REGISTERED ELECTORS”**

**KIRK, HUTH, LANGE & BADALAMENTI, PLC  
RESEARCH MEMORANDUM**

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**QUESTION PRESENTED**

The relevant sections of the Home Rule City Act (“HRCA”) for vacating the City of Watervliet’s incorporation<sup>1</sup> includes both the terms “qualified electors” and “registered electors.” In general, the term “registered electors” appears when discussing the petition process, and the term “qualified electors” appears when discussing the ballot question. What are the meanings of these two terms? Are they interchangeable?

**BRIEF ANSWER**

Not only do the meanings of these terms differ, but also the term “qualified electors” means different things in the HRCA depending upon the context in which it is used.

The term “qualified electors” has two distinct meanings under the HRCA, depending upon the context in which it is used. In general, the term “qualified electors” means all of the persons *eligible* to register to vote. The HRCA uses this general definition when it discusses the petition process. When the HRCA discusses the ballot question, however, “qualified electors” takes on a different meaning. There, it means only that subset of “qualified electors” who voted in the election.

The term “registered elector” is narrower in scope than the term “qualified elector.” The term “registered electors” means those “qualified electors” who register to vote under the Michigan Election Law (MCL 168.1 *et seq.*).<sup>2</sup> Only “registered electors” are eligible to vote.<sup>3</sup> In this case, the term “registered elector” means those “qualified electors” who registered to vote under the Michigan Election Law and reside in either the City of Watervliet or Watervliet Charter Township.

**LAW AND ANALYSIS**

The relevant sections of the Home Rule City Act (“HRCA”) for vacating the City of Watervliet’s incorporation include both the terms “qualified electors” and “registered electors.” Not only do these terms have distinct meanings, but also the term “qualified electors” has two meanings depending upon the context in which it is used. Broadly speaking, the process to vacate the City of Watervliet’s incorporation consists of two steps: first, a petition, and second, a ballot. The term “qualified electors,” appears in provisions pertaining to either the petition or the ballot. The term “registered electors,” on the other hand, appears only in those provisions pertaining to the petition.

**A. “Qualified electors” appears five times under the relevant sections of the HRCA and its meaning depends upon the context in which it appears.**

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<sup>1</sup> MCL 117.8, 117.9, 117.10, 117.12, and 117.14a.

<sup>2</sup> See e.g. MCL 168.499.

<sup>3</sup> MCL 168.491.

The term “qualified electors” appears five times under the relevant sections of the HRCA. Its meaning depends on whether the term refers to the petition or the ballot.

“Qualified electors” appears three times in MCL 117.14a. The term appears once in the section 14a’s first sentence and twice in the section 14a’s third sentence.

“Whenever the *qualified electors* of any city incorporated under the provisions of this act shall file a petition with the city clerk . . . the city clerk shall . . . refer [the petition] to the county clerk . . . not less than 30 days before the convening of the board of supervisors in regular session.”<sup>4</sup>

. . .

In case a 2/3 majority of the *qualified electors* of such city shall vote in favor of the vacation of the incorporation of the same and a majority of the *qualified electors* of the township . . . shall vote in favor of the annexation of the territory of such city to such township or townships, the county clerk shall . . . make and certify 4 transcripts of all the proceedings in the matter and shall file 2 of such transcripts in the office of the secretary of state and the other 2 copies in his own office, and, upon such filing, the incorporation of such city shall be vacated and the territory thereof annexed to the township. . . .”<sup>5</sup>

“Qualified electors” appears two other times under the relevant sections of the HRCA (sections 8 and 9). It appears once in the fourth sentence of MCL 117.8(1) and once in the third sentence of MCL 117.9(8).

“. . . [I]f the [county board of commissioners] determines that the petition complies with the requirements of this act and that the statements contained in the petition are correct, the board shall . . . provide that the question . . . be submitted to the *qualified electors* of the district to be affected at the next general election or at a special election before the next general election.” MCL 117.8(1).

. . .

“As an alternate method, where there are no *qualified electors* residing in the territory proposed to be annexed to the city . . . the annexation may be accomplished by the affirmative vote of the city council of the city and the approval of the township board of the township.” MCL 117.9(8).

The term “qualified electors” is not defined in the HRCA, so its meaning must be determined by examining extrinsic sources.

**1. In sections pertaining to the petition, the term “qualified electors” retains its general meaning, which is “all persons who are eligible to register to vote.”**

In general, the term “qualified electors” means all persons eligible to vote – whether or not they are registered. Article II, §1 of the Constitution of the Michigan 1963, mandates that the Legislature define the residence for voting purposes. The Legislature did so by enacting MCL 168.10, which defines a “qualified elector” as “any person who possesses the qualifications of an elector as proscribed in section 1 of article 2 of the state constitution and has resided in the city

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<sup>4</sup> MCL 117.14a.

<sup>5</sup> MCL 117.14a.

or township 30 days.” A “qualified elector” is a (1) United States citizen, (2) who has attained the age of 18, (3) is not a felon or mentally incompetent, and (4) meets the residency requirements.<sup>6</sup> In short, a “qualified elector” then is not necessarily eligible to vote, but rather is merely qualified to register to vote.<sup>7</sup>

This general meaning of “qualified electors” has a long history in Michigan jurisprudence. In 1910, the Michigan Supreme Court said, in dicta, that “we are all agreed that a qualified elector is one who meets the requirements of section 1, art. 7 of the Constitution of Michigan.”<sup>8</sup>

In this case, the term “qualified electors” appears to subscribe to the general definition when it appears in sections regarding the petition. For example, the term “qualified electors” in the provisions below suggest the general meaning:

“ . . . [I]f the [county board of commissioners] determines that the petition complies with the requirements of this act and that the statements contained in the petition are correct, the board shall . . . provide that the question . . . be submitted to the *qualified electors* of the district to be affected at the next general election or at a special election before the next general election.” MCL 117.8(1).

...

“As an alternate method, where there are no *qualified electors* residing in the territory proposed to be annexed to the city . . . the annexation may be accomplished by the affirmative vote of the city council of the city and the approval of the township board of the township.” MCL 117.9(8).

...

“Whenever the *qualified electors* of any city incorporated under the provisions of this act shall file a petition with the city clerk . . . the city clerk shall . . . refer [the petition] to the county clerk . . . not less than 30 days before the convening of the board of supervisors in regular session.” MCL 117.14a.

What unites these provisions is that the term “qualified electors” refers to the petition process. In other words, the term “qualified electors” here means all non-felon, mentally competent, United States citizens who have attained the age of 18 and reside in either the City of Watervliet or the Watervliet Charter Township.

**2. In sections pertaining to the ballot, the term “qualified electors” means only those “qualified electors” who actually voted.**

The HRCA also uses the term “qualified electors” when referring to after the election.

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<sup>6</sup> See Michigan Constitution Article II, §1 and Article II, §2; see also *Meridian Charter Township v Ingham County Clerk*, 285 Mich App 581 (2009).

<sup>7</sup> See *Pillon v Kirwan*, 1 Mich App 585 (1965)(holding that to be a candidate for judicial office one only needs to be a *qualified elector* eligible to register, and that “one need not be a *registered* qualified elector.”)(Emphasis added).

<sup>8</sup> *Rutledge v Board of Supervisors of Marquette Country*, 160 Mich 22, 26 (1910). The Court in *Rutledge* was referring to the qualification provision of the 1850 Michigan Constitution. It is the predecessor to the current Art. II §1 of the 1963 Constitution.

In case a 2/3 majority of the *qualified electors* of such city *shall vote* in favor of the vacation of the incorporation of the same and a majority of the *qualified electors* of the township . . . shall vote in favor of the annexation of the territory of such city to such township or townships, the county clerk shall . . . make and certify 4 transcripts of all the proceedings in the matter and shall file 2 of such transcripts in the office of the secretary of state and the other 2 copies in his own office, and, upon such filing, the incorporation of such city shall be vacated and the territory thereof annexed to the township. . . .”<sup>9</sup>

In the paragraph above, the term “qualified electors” is ambiguous because it can be reasonably interpreted to mean two different meanings.

On one hand, “qualified electors” can be interpreted to mean the general definition discussed above (i.e. all persons who are eligible to register to vote in the City of Watervliet and Watervliet Charter Township). In that case, a “2/3 majority of the qualified electors of such city” would mean 2/3 of all non-felon, mentally competent, United States citizens who have attained the age of 18 and reside in the City of Watervliet. “A majority of the qualified electors of the township” would mean the majority of all non-felon, mentally competent, United States citizens, who have attained the age of 18, and reside in the Watervliet Charter Township.

If this is the correct interpretation of “qualified electors” in this section, then to vacate incorporation the communities would require greater than 2/3 and 1/2 of the vote because this interpretation includes those persons who do not vote. The plain meaning of the text suggests that this meaning is the correct one. Moreover, a term is presumed to bear a consistent meaning throughout the text.<sup>10</sup> In every other instance, the phrase “qualified electors” means the same thing: all persons eligible to register to vote.

On the other hand, “qualified electors” here can be interpreted to mean something narrower. It can be interpreted to mean all persons who actually voted in the election for vacation of incorporation. This issue has come before the Court before.

In *Wilcox v Board of Commissioners of Sinking Fund of City of Detroit*, the Court was construing an amendment to the Michigan Constitution of 1908, which required property-tax increases to be approved by “two-thirds vote of the electors of any assessing district.”<sup>11</sup> The issue was whether the two-thirds vote requirement meant “all electors of the district, the registered electors, or the electors voting on the proposition to increase the rate.”<sup>12</sup> The Court reviewed other instances in the Constitution where “questions are submitted to people,” and found in every other instance, “qualified electors” was narrowed in the text to those “qualified electors” who actually voted.<sup>13</sup> “Ordinarily, the fact that different language is here used than elsewhere in the Constitution would prompt a different construction because it would indicate a different intention,” the Court explained. “But this amendment is so generally confusing and careless of language that difference in words has no force of indication that a different rule was

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<sup>9</sup> MCL 117.14a.

<sup>10</sup> “In the construction of a statute, it is regarded as reasonable to assume, presume, or conclude *Prima facie*, that words used in one place in a statute have the same meaning in every other place in the statute.” *Phipps v Campbell, Wyant & Cannon Foundry, Div of Textron, Inc*, 39 Mich App 199, 216, (1972).

<sup>11</sup> 262 Mich 699 (1933).

<sup>12</sup> *Id* at 704.

<sup>13</sup> The Legislature narrowed the term “electors” in the statute, *in pari materia*, MCL 74.18. Disincorporation of a village under MCL 74.18a only occurs if “2/3 of the electors *voting on the question* vote ‘yes’.” Emphasis added.

intended.” The Court held that “electors” means those actually voting on the question because “it is contrary to our system of government to count electors on a question who are not sufficiently interested to vote.”<sup>14</sup>

In this case, while there are two reasonable interpretations of the meaning of “qualified electors,” a court will likely hold that the term “qualified electors” has two different meanings within the HRCA. The term retains its general meaning – all persons eligible to register to vote – when the statute refers to the petition process (the first sentence of MCL 117.14a, MCL 117.8, and MCL 117.9). But the term adopts a narrower meaning when the statute refers to the ballot – only those electors who actually voted – because “it is contrary to our system of government to count electors on a question who are not sufficiently interested to vote.”<sup>15</sup>

**B. The term “registered electors” means a person who is a “qualified elector” and who registers to vote.**

The term “registered electors” appears three times in the relevant sections of the HRCA, and it appears only in those provisions pertaining to the petition.

MCL 117.14a permits “qualified electors” of a home rule city to file a *petition* with the city clerk praying that the incorporation of that city be vacated. The petition must be “signed by not less than 1/4 of the *registered electors* of such city as shown by the registration lists of the city on the date of such filing.”<sup>16</sup>

MCL 117.9 contains the other two instances where the term “registered electors” can be found:

“(5) The commission's order shall become final 30 days after the date of the order unless within that 30 days a *petition* is filed with the commission which contains the signatures of at least 25% of the *registered electors* residing in the portion of the territory approved for annexation, in the annexing city or in the balance of the township.”

...

(7) In addition to the methods for initiating annexation as provided in this act, a *petition* or resolution as follows may be submitted to the state boundary commission in a form and manner prescribed by the commission:

...

(c) By *petition* by 20% of the *registered electors* who reside in the area proposed for annexation.

In Michigan, only registered voters are permitted to vote.<sup>17</sup> The Michigan Election Law (MCL 168.1 *et seq.*) defines a “registered voter” as “a person who is a qualified elector in this

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<sup>14</sup> *Wilcox*, at 705.

<sup>15</sup> *Id.*

<sup>16</sup> MCL 117.14a.

<sup>17</sup> MCL 168.491. The registration requirement has long been the law in this state. In 1868, ruling on the meaning of the article of the former Constitution of 1850 that forbid all voting by persons not registered, the Supreme Court held that the article did “not speak the language of a mere offer, or proposition to the electors, to register or not, but utters the language of law; *unconditional, absolute, imperative*; and declares, *that all who do not register shall not vote.*” *People ex rel Foley v Kopplekom*, 16 Mich 342, 346-47 (1868).

state and who registers to vote in a manner consistent with the voter registration act of 1993.”<sup>18</sup> The term “qualified elector” here means the general definition of “qualified elector” discussed above. The Michigan Election Law enumerates the methods a qualified elector may register to vote.<sup>19</sup> “Voter” and “elector” are synonyms. Thus, a “registered voter” is a “registered elector.”

In every one of these three instances, the term “registered electors” is used in the context of the petition process. For instance, MCL 117.14a requires that the petition be signed by at least 1/4 (25%) of the total registered voters in the city. Each township and city clerk is required to report to the county clerk the total number of persons eligible to vote in an upcoming election.<sup>20</sup> The term “registered elector” in the context of the HRCA means those “qualified electors” who are on the voter registration lists under the Michigan Election Law.

### **CONCLUSION**

“Registered electors” and “qualified electors” have distinct meaning under the HRCA. The general definition for “qualified elector” is any person who possesses the qualifications of an elector proscribed in Article II, section 1 of the Michigan Constitution and has resided in the city or township 30 days. Any use of the term “qualified electors” in the HRCA that pertains to the petition process means this general definition. Any use of the term “qualified electors” that pertains to the ballot means only those “qualified electors” who actually voted. The term “registered elector” is synonymous with “registered voter,” and it means any “qualified elector” who registers to vote under the Michigan Election Law.

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<sup>18</sup> MCL 168.509t.

<sup>19</sup> See e.g. MCL 168.499.

<sup>20</sup> MCL 168.524.



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**C-5: WATERVLIET JOINT FIRE BOARD**

**KIRK, HUTH, LANGE & BADALAMENTI, PLC**  
**RESEARCH MEMORANDUM**

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**QUESTION PRESENTED**

The City of Watervliet (“City”) and the Charter Township of Watervliet (“Township”) jointly administer and operate the Watervliet Fire Department, which serves the residents of both municipalities. The Watervliet Fire Department is administered by the Watervliet Joint Fire Board. In 2014, the Joint Fire Board entered into a fire protection agreement with Bainbridge Township (“Bainbridge”). Bainbridge pays the Joint Fire Board in exchange for fire protection services (Section 1) in its northeast and northwest quadrants and for non-voting representation on the Joint Fire Board. Section 15 of the agreement provides that “this agreement shall apply to and bind the successors and assigns of the respective parties.”

- What will happen to the Joint Fire Board if the City vacates its incorporation?
- How will the City’s vacation affect the fire protection contract with Bainbridge?

**BRIEF ANSWER**

The Joint Fire Board will dissolve with the City because MCL 41.811 requires at least two members to create the Joint Fire Board. Because the City and Township are the only members of the Joint Fire Board, the Joint Fire Board will dissolve. The Joint Fire Board’s assets and obligations will become the unified Township’s assets and obligations. The Township can recreate a similar board to operate and administer the Watervliet Fire Department under MCL 41.812. As the successor of the current Joint Fire Board, the new fire board will be contractually obligated to perform under the Bainbridge fire protection services agreement. Bainbridge will be permitted to appoint a non-voting representative to the new fire board.

**LAW & ANALYSIS**

Section 11 of the Police and Fire Protection Act (MCL 41.801 *et seq.*) authorizes the creation of the Joint Fire Board. MCL 41.811 provides that “the governing bodies of 2 or more contiguous townships . . . or qualified cities may . . . create a joint . . . fire administrative board.” (Emphasis added.) MCL 41.811 requires the Joint Fire Board to have at least two member municipalities. The current member municipalities of the Joint Fire Board are the City and the Township.

Bainbridge is not a participating member of the Joint Fire Board. The powers of the Joint Fire Board derive not from its distinct corporate personhood, but rather from contract.<sup>1</sup> In this case, the governing contract is the “Amended and Restated Watervliet Joint Fire Board Agreement.” Bainbridge is not a party to that contract. Rather, Bainbridge is a party to a fire

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<sup>1</sup> OAG, 1985-1986, No. 6350, (March 26, 1986) (stating that even though a joint fire board can be established as a public body corporate under the Urban Cooperation act, it still derives its powers “from the contractual agreement . . . rather than by virtue of corporate status.”)

protection agreement, which MCL 41.806 permits.<sup>2</sup> In the fire protection agreement, Bainbridge pays the Joint Fire Board in exchange for fire protection services in its northeast and northwest quadrants and for non-voting representation on the Joint Fire Board. Non-voting representation is not the same as being a participating member. Because Bainbridge is not a party to the Amended and Restated Watervliet Joint Fire Board Agreement, it is not a member of the Joint Fire Board.

The City is currently a member of the Joint Fire Board; however, once the City vacates under MCL 117.14a, “its powers and functions are . . . terminated” and it “goes out of existence.”<sup>3</sup> The territory from which it detached returns to the Township. Its assets become property of the Township.<sup>4</sup> The City ceases to be a legal person. Thus, once the City vacates, it will no longer be a member of the Joint Fire Board.

After the City vacates, the Township will be the sole member of the Joint Fire Board. MCL 41.811 requires at least two members. Because it will only have one member, once the City dissolves, so too will the Joint Fire Board. The assets and liabilities of the Joint Fire Board will become assets and liabilities of the Township.<sup>5</sup> The Watervliet Fire Department and all of its assets will become Township assets.

Although the Joint Fire Board will dissolve, the unified Township will have the authority under MCL 41.812 to create a fire administrative board that will serve a similar function as the current Joint Fire Board. For the sake of continuity, the unified Township may wish to appoint the same five members of the Joint Fire Board to the new fire board.

The new fire board will be the successor to the Bainbridge fire protection agreement. Section 15 of the fire protection agreement provides that “this agreement shall apply to and bind the successors and assigns of the respective parties.” Thus, the new fire board will be required to perform fire protection services under the contract with Bainbridge. Under the fire protection agreement with Bainbridge, Bainbridge will have the power to appoint a non-voting representative to the new fire board.

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<sup>2</sup> *Hess v Cannon Twp*, 265 Mich App 582 (2005)(“MCL 41.806 gives townships broad powers to establish and maintain police and fire departments, including the power to contract with legislative bodies of neighboring municipalities to give or receive police and fire services.”) Further, MCL 41.806(4) provides that “any of the powers provided in this section . . . may be delegated to a fire administrative board established under section 11 [i.e. a joint fire board].”

<sup>3</sup> 1 E.C. Yokley, *Municipal Corporations*, (1956) §50, p 99.

<sup>4</sup> MCL 117.14a.

<sup>5</sup> *Id.*

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## **C-6: WATERVLIET DOWNTOWN DEVELOPMENT AUTHORITY**

### **KIRK, HUTH, LANGE & BADALAMENTI** **RESEARCH MEMORANDUM**

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#### **QUESTION PRESENTED**

In 1984 the City of Watervliet created the Downtown Development Authority (“DDA”) and District to “grow the downtown area and increase the viability of business in Watervliet.”<sup>1</sup> The DDA has no debt. What will happen to the DDA if the City of Watervliet (“City”) vacates its incorporation under the Section 14a of the Home Rule City Act (MCL 117.14a) and merges with the Charter Township of Watervliet (“Township”)?

#### **BRIEF ANSWER**

If the City vacates, the DDA will become part of the Township. The general rule for a city that vacates its incorporation under MCL 117.14a is that the city and all of its component parts dissolve upon vacation. Nevertheless, this general rule does not apply to the DDA because of a specific provision of the Downtown Development Authority Act (MCL 125.1651 *et seq.*). MCL 125.1653a requires an authority managing a downtown development district whose area is annexed by another municipality to become an authority of the annexing municipality. Because the Township will be annexing the territory of the City under MCL 117.14a, the DDA must become an authority of the Township. If the Township wishes to dissolve the DDA, it may do so using the method enumerated in the Downtown Development Authority Act at MCL 125.1680.

#### **LAW & ANALYSIS**

##### **1. After the City vacates, its DDA will become a component of the Township.**

The City of Watervliet (“City”) created the Downtown Development Authority (“DDA”) in 1984 under the Downtown Development Authority Act (MCL 125.1651 *et seq.*) to “correct and prevent deterioration in the downtown district, encourage historical preservation, and to encourage growth within the downtown district.”<sup>2</sup> In 2008, the City Commission approved the DDA’s Development and Tax Increment Financing Plan (“the Plan”), which is to last until the year 2023.<sup>3</sup> The DDA has no debt.

When a city vacates its incorporation under MCL 117.14a, “its powers and functions are thereby terminated” and “the corporation goes out of existence.”<sup>4</sup> The territory from which it detached returns to the township it derived. Its assets become property of the township.<sup>5</sup> The city ceases to be a legal person. Its ordinances cease to be binding law. In short, vacating incorporation

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<sup>1</sup> LaGrow Consulting, *DDA Development and Tax Increment Financing Plan*, November 13, 2008, p 4.

<sup>2</sup> Plante Moran, *City of Watervliet, Financial Report with Supplemental Information June 30, 2009*, p 18; (accessible at [https://www.michigan.gov/documents/treasury/112080WatervlietCity20091204\\_303470\\_7.pdf](https://www.michigan.gov/documents/treasury/112080WatervlietCity20091204_303470_7.pdf))

<sup>3</sup> LaGrow Consulting, *DDA Development and Tax Increment Financing Plan*, November 13, 2008, p 21; See also, City of Watervliet Ordinance, Sec. 2-2356 stating “The tax increment financing plan and downtown development plan, as proposed by the downtown development authority and amended by the city commission, is hereby approved.”

<sup>4</sup> 1 E.C. Yokley, *Municipal Corporations*, (1956) §50, p 99.

<sup>5</sup> MCL 117.14a.

under MCL 117.14a dissolves a city and all of its component agencies and other political subdivisions.

The DDA is an agency<sup>6</sup> of the City with a distinct corporate personhood.<sup>7</sup> Assuming, for the sake of argument, that the City vacated its incorporation without any other applicable provision of law, then the DDA would dissolve along with the City. The Downtown Development Authority Act (“DDA Act”), however, contains a specific provision that requires the DDA survive the City’s dissolution. It is a general rule of construction that where there is a conflict between a statute of general application and one of specific application, the specific controls the general – *gerneralia specialibus non derogant*.<sup>8</sup>

The specific statute, MCL 125.1653a, provides:

“If a downtown district is part of an area annexed to . . . another municipality, the authority managing that district shall become an authority of the annexing . . . municipality. Obligations of that authority incurred under a development or tax increment plan, agreements related to a development or tax increment plan, and bonds issued under this act shall remain in effect following the annexation. . . .”<sup>9</sup>

The DDA Act defines “authority” as “a downtown development authority under this act.”<sup>10</sup> The DDA Act defines “municipality” as “a city, village, or township.”<sup>11</sup> Therefore, under MCL 125.1653a, if the Township annexes the territory consisting of the downtown development district of the City, then the City’s DDA becomes the Township’s DDA. Under MCL 117.14a, once the City vacates, the Township annexes *all* of its territory. Thus, if the City vacates, the DDA will become part of the Township.

## **2. If the Township wishes to dissolve the DDA, it must do so under MCL 125.1680.**

Townships, as with all municipal corporations, lack inherent power to make laws. They “are governments of enumerated powers, acting by a delegated authority . . . [and] can exercise those [powers] only which are expressly or impliedly conferred, and subject to such regulations or restrictions as are annexed to the grant.”<sup>12</sup> Thus, if the Township wanted to dissolve the City’s DDA, it would lack the inherent power to do so.<sup>13</sup>

A township board or the electorate must be given the express or implied power to dissolve a component of township government. In *Risk v Lincoln Charter Twp Board of Trustees*, electors of Lincoln Township became disillusioned with a park commission it had created and filed a petition to dissolve it via ballot.<sup>14</sup> The Michigan Court of Appeals reviewed the township parks act (MCL 41.421 *et seq.*), which created the Lincoln Township park commission, and compared it

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<sup>6</sup> The Plan, p 5.

<sup>7</sup> MCL 125.1652.

<sup>8</sup> *Regents of Univ of Michigan v Auditor Gen*, 109 Mich 134, 137 (1896); see also *Wayne Co Prosecutor v Wayne Circuit Judge*, 154 Mich App 216, 221 (1986).

<sup>9</sup> MCL 125.1653a.

<sup>10</sup> MCL 125.1651(c).

<sup>11</sup> MCL 125.1651(s).

<sup>12</sup> *City of Kalamazoo v Titus*, 208 Mich 252, 262, (1919).

<sup>13</sup> See *Cain v Brown*, 111 Mich 657 (1897)(holding municipal corporations, as well as the purposes they are created to subserve, can only be dissolved by the consent of the legislature).

<sup>14</sup> 279 Mich App 389 (2008).

to other statutes that create municipal component commissions, including the community center act (MCL 123.41 *et seq.*), the band act (MCL 123.861 *et seq.*), and the sheriff’s department civil service commission act (MCL 51.351 *et seq.*).<sup>15</sup> Because the other acts explicitly provide for the dissolution of various commissions, boards, and programs, and the township parks act lacks such provision, the Court held that “there is simply no statutory mechanism for dissolving a voter-established township park commission.”<sup>16</sup>

In this case, the DDA Act does provide an explicit method to dissolve the DDA. Under MCL 125.1680:

“An authority that has completed the purposes for which it was organized shall be dissolved by ordinance of the governing body. The property and assets of the authority remaining after the satisfaction of the obligations of the authority belong to the municipality.”

Here, the Plan is set to expire in the year 2023. The unified Township will very likely have the authority to dissolve the DDA then. If the Township board decides that the DDA has “completed the purposes for which it was organized” *before* the Plan terminates in 2023, then it is less likely that a court will uphold the Township’s decision.

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<sup>15</sup> *Id* at 400-4.

<sup>16</sup> *Id* at 404.

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## **C-7: STRUCTURING CITY ROAD IMPROVEMENT**

### **KIRK, HUTH, LANGE & BADALAMENTI** **RESEARCH MEMORANDUM**

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#### **QUESTIONS PRESENTED**

The City of Watervliet (“City”) is contemplating vacating its incorporation to merge with the Charter Township of Watervliet (“Township”). The City’s roads require improvement. If the City decides to vacate:

- 1. Is the Berrien County Road Commission (“Road Commission”) obligated to take control of the City’s roads without regard to their condition?**
- 2. If the City decides to improve the roads, should it issue debt before it vacates to fund the road improvement project?**

#### **BRIEF ANSWERS**

- 1. Very likely, yes.** Under the MCL 247.669, the Road Commission is required to take over all township roads, streets and alleys as county roads regardless of their condition. Under the Transfer of Jurisdiction over Highways Act (MCL 247.851 *et seq.*), the transferee may request the transferor to bring the roads “up to reasonably acceptable standards.” But the City is not “transferring” the roads. Further, because counties cannot “transfer” roads to townships under the transfer act, it does not apply here. Finally, the Road Commission likely cannot relinquish jurisdiction to the unified Township under MCL 224.18 after the City vacates. After vacation, the Road Commission obtains the roads and has the duty to keep them in reasonable repair.<sup>1</sup>
- 2. Yes, if the City wishes to improve its roads it should issue debt before it vacates.** The Home Rule City Act (“HRCA”) provides a method whereby the City will consolidate all City debt into a special fund administered by the unified Township. The property owners within the boundaries of the vacated City will pay the outstanding City debt from the special fund. The other method to improve the roads through the Charter Township Act (by way of a special assessment district) is unnecessarily burdensome because the City will be consolidating its debt under the HRCA anyway. Moreover, it presents significant obstacles that are absent in the HRCA.

#### **LAW & ANALYSIS**

- 1. Once the City vacates, the Road Commission will take control of the City’s roads because under MCL 247.669, townships do not have jurisdiction over roads. MCL 247.669 requires the Road Commission to obtain the roads regardless of their condition.**

If the City decides to vacate its incorporation, it will use the Home Rule City Act (“HRCA”) to do so. Under MCL 117.14a of the HRCA, once a city vacates its incorporation, its assets “shall become the property of the township to which the territory of the city is annexed.”

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<sup>1</sup> MCL 224.21.

The issue of whether a city's roads, streets and alleys are considered city assets under the HRCRA is irrelevant because even if they are considered assets, a township still cannot hold them. Township roads were first phased out with the McNitt Act of 1931.<sup>2</sup> In 1951, the Michigan Legislature enacted MCL 247.669 that requires the board of road commissioners to complete the phase out of the McNitt Act and "take over as county roads all roads, streets and alleys [as required under the McNitt Act]." Moreover, MCL 247.669 requires county road commissioners to "take over as county roads all streets and alleys lying outside the limits of incorporated cities and villages. . . ." These streets and alleys "shall be county roads in all respects and for all purposes and shall be classified as county primary roads or county local roads pursuant to [the Michigan Transportation Fund Act (Act 51 of 1951)]." Thus, even if the City's roads, streets and alleys are considered "assets," the Township cannot retain them because MCL 247.669 requires all of the Township's roads, streets and alleys to be "county roads in all respects and for all purposes."

**a. The Transfer of Jurisdiction over Highways Act does not apply to transfers to or from a township.**

MCL 247.669 does not require that a township first improve its roads before a county road commission takes the roads over. The idea of improving roads before transferring the roads comes from the Transfer of Jurisdiction over Highways Act. The transfer act is the ordinary method in which roads transfer jurisdictions.<sup>3</sup>

Under the transfer act, if the transferee jurisdiction does not consent to the transfer, then both jurisdictions create a "highway jurisdiction determination board." The board is the final arbiter of whether renovations are necessary before the transfer to "bring the highway up to reasonable acceptable standards."<sup>4</sup>

The transfer act does not apply in this case, however. The transfer act applies to transfers "from the jurisdiction of the state to a county, city or village or from a county to a city or village."<sup>5</sup> "The transfer act contains no provision for the transfer of a highway from a county to a township."<sup>6</sup>

**b. The County Road Law likely does not permit the Road Commission to "relinquish jurisdiction" of the roads to the Township.**

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<sup>2</sup> "The underlying legislative objective of the McNitt Act was to have boards of county road commissioners take over all township roads and dedicated streets and alleys in recorded plats and outside incorporated cities and villages. The boards were given 6 years within which to accomplish this objective." *Petition of Miller*, 18 Mich App 480, 483, 171 NW2d 473, 475 (1969).

<sup>3</sup> Citizens Research Council of Michigan, *Lessons from the Proposed Merger of Onekama Village with Onekama Township*, January 2013, Report 381, p. 14. When Onekama Village attempted to disincorporate, the township, the village, and the county governments all (falsely) believed that the transfer act would apply. (The governments likely believed this falsehood because all parties were familiar with the method enumerated in the transfer act.) Ultimately, because the village roads were in adequate condition, the county road commission accepted the roads without "investment to upgrade them prior to the transfer." P.14.

<sup>4</sup> MCL 247.858.

<sup>5</sup> MCL 247.852.

<sup>6</sup> *Acer Paradise, Inc v Kalkaska County Road Commission*, 262 Mich App 193, 200 (2004).

Under MCL 224.18 of the County Road Law (MCL 224.1 *et seq.*), the Road Commission “at any time, may either relinquish jurisdiction of or absolutely abandon and discontinue any county road, or any part of a county road, by a resolution adopted by majority vote.”<sup>7</sup>

The County Road Law distinguishes between “relinquishment of jurisdiction” from “absolute abandonment and discontinuance.” Relinquishment of jurisdiction reverts control of the road to “the *municipality* within which the road is situated, and the county shall be relieved of the responsibility of the road.”<sup>8</sup> Absolute abandonment and discontinuance terminates the existence of the road as a public highway. In short, relinquishment of jurisdiction transfers responsibility of the road from one government entity to another. Absolute abandonment does not transfer responsibility – it ends it.

The County Road Law further distinguishes between relinquishment of jurisdiction and absolute abandonment and discontinuance by requiring that the board of road commissioners determine that “it is in the best interests of the public that the highway is . . . absolutely abandoned and discontinued.” The “best interest of the public” requirement does not apply to relinquishment of jurisdiction.

The issue is whether the Road Commission has the authority to relinquish jurisdiction of the roads to the Township. It is unlikely that the Road Commission has this authority.

A township likely must assent to jurisdiction. In *Acer Paradise, Inc v Kalkaska County Road Commission*, the Kalkaska County Road Commission relinquished jurisdiction of a quarter-mile of road to Clearwater Township only after the township “passed a resolution . . . in which it accepted jurisdiction.”<sup>9</sup> The Michigan Court of Appeals held that “in relinquishing jurisdiction over this road, the county properly acted pursuant to the provisions of MCL 224.18, as did the township in *accepting* jurisdiction over the road.”<sup>10</sup>

Moreover, *Acer Paradise* interpreted portions MCL 224.18 that the Legislature has since amended.<sup>11</sup> The language interpreted in *Acer Paradise* reads:

“After proceedings to relinquish jurisdiction have been had, the jurisdiction and control of the road . . . shall revert to the *township or municipality* within which the road is situated. . . .”<sup>12</sup>

2000 PA 342 deleted the words “township or” from the sentence above.<sup>13</sup> Other portions of the statute retained “township” in the “township or municipality.”<sup>14</sup> Indeed, the phrase “township or municipality” appears in portions of the statute that discuss abandonment, and not relinquishment of jurisdiction.<sup>15</sup> Moreover, the statute at times refers to “townships” separately and at other times refers to “municipalities” separately. Legislatures do not dally in needless

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<sup>7</sup> MCL 224.18(3).

<sup>8</sup> MCL 224.18(3) (emphasis added).

<sup>9</sup> 262 Mich App 193, 195 (2004).

<sup>10</sup> *Id.* at 204; (emphasis added).

<sup>11</sup> *Id.* at 197.

<sup>12</sup> *Id.* at 197; (emphasis added).

<sup>13</sup> See Michigan Senate version of House Bill No. 5940, as passed by the Senate, December 6, 2000.

<sup>14</sup> See MCL 224.18(5) for two examples of the phrase “township and municipality.”

<sup>15</sup> MCL 224.18(5).



variation. Every word must be given effect – *verba cum effectu sunt accipienda*.<sup>16</sup> The legislative history suggests that the Road Commission lacks the authority to relinquish jurisdiction to the Township regardless of whether the Township consents to it.

The Road Commission may argue that it has the authority to relinquish jurisdictions of the roads because the first House version of 2000 PA 243 attempted to amend MCL 224.18 to require that a township consent to jurisdiction.<sup>17</sup> But not only did the Legislature remove the consent amendment, it also removed the text “township” from the provision relating to relinquishment of jurisdiction. Thus, the Road Commission likely lacks the authority to relinquish jurisdiction of former-City roads to the Township.<sup>18</sup>

The City can make a strong case that it is not required to improve its roads before it vacates. Under MCL 247.669, the Road Commission will take control of the City’s roads upon its vacation. Because this is a vacation of incorporation and not a transfer of jurisdiction, the Transfer of Jurisdiction over Highways Act does not apply. Moreover, the transfer act applies only to downstream transfers (e.g. from county to city); it does not apply to upstream transfers (e.g. from city to county). Finally, MCL 224.18 likely does not permit the Road Commission to relinquish jurisdiction of the roads to the Township. Nevertheless, the City still wishes to improve its roads.

## **2. If the City decides to repair the roads, it should follow the process laid out in the HRCA.**

Even though the City is likely not required to improve the roads, it still may wish to. There are two methods by which to raise funds to pay for road repairs. First, the City can vacate and wait for the Township to create a special assessment district. Second, the City can issue debt before it vacates and consolidate all of its debt as enumerated in the HRCA.

Regarding the first method, the City can wait until after it vacates for the unified Township to repair the roads. Under MCL 42.31 of the Charter Township Act, the unified Township may create a special assessment district to improve the former-City roads. Road improvements under the Charter Township Act follow the same procedure as under the Public Improvements Act of 1954 (MCL 41.721 *et seq.*).

This method, however, raises several significant obstacles. Under the Public Improvements Act, record property owners can object to the levying of the special assessment district.<sup>19</sup> Moreover, road improvements cannot be made without the authorization of the Road Commission.<sup>20</sup> The unified Township will be required to hold a public hearing to hear objections

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<sup>16</sup> *Kondzer v Wayne Cnty Sheriff*, 219 Mich App 632, 638, (1996)(Court must avoid any construction that would render any part of the statute surplusage or nugatory).

<sup>17</sup> See House Legislative Analysis, House Bill 5940, First Analysis, which provides the background on *Holmes Twp v Board of County Road Commissioners of Menominee County* (Opinion No. M97-8126-CZ) where the court held that the township did not need to consent to accept jurisdiction under MCL 224.18. The *Holmes Twp* case was decided before the Legislature removed the term “township” from the phrase “township or municipality” from the portion of the statute regarding relinquishing jurisdiction.

<sup>18</sup> The Road Commission additionally lacks the authority to abandon *all* former-City roads because doing so would be against the public interest and an example of a “clear abuse of discretion.” See *Dalton Twp v Muskegon Cnty Bd of Cnty Rd Comm'rs*, 223 Mich App 53, 56, (1997).

<sup>19</sup> See MCL 41.723.

<sup>20</sup> MCL 41.722.

for creating a special assessment district.<sup>21</sup> Assessments are collected as they become due,<sup>22</sup> or, alternatively, the unified Township may defray road repair costs by creating a “township improvement revolving fund”, but the most the fund can transfer is a 2-mill levy.<sup>23</sup>

Regarding the second method, the City would borrow money on the credit and issue bonds.<sup>24</sup> Once the City borrows the money to repair the roads, it can consolidate the road debt with all other City debt (including debt used to repair the City’s sewer collection system) under the vacating of incorporation provision of the HRCA (MCL 117.14a).

Under MCL 117.14a, after the City vacates, the City Clerk must certify to the Berrien County Board of Commissioners a statement of all outstanding debt with an accounting of all moneys for the payment of that debt. The Berrien County Board of Commissioners will examine the statement of all outstanding debt, and will then pass a resolution authorizing the assessment and collection of taxes within the territory of the former-City. The Township’s supervisors have the duty to collect the taxes upon the territory embraced within the limits of the former-City, and to place the money into a separate fund. The separate fund will pay the former-City debt in the manner authorized in the County Board of Commissioners resolution. For the purposes of paying the City debt, the law treats the area of the former-City as a de facto city. Even though the City will be vacated, it will be subject to tax limitation provisions of the City of Watervliet’s City Charter and the HRCA, and not to the tax limitations placed on townships.

Both of the methods are viable options. With both methods, a special assessment district can be created to raise funds for street improvements; however, the second method is preferable.

The Public Improvements Act under the first method carries the increased risk that the roads will not be repaired. For example, a court could require more than one special assessment district; record land owners could object to the special assessment levy; and the township improving revolving fund has a maximum 2-mill levy (apparently, the Township of Watervliet has already met the 2-mill threshold). This method allows the City to repair the roads at a slower pace, if it desires, because the debt will be issued after vacation.

The second method under the HRCA mitigates all of the risks that arise under the Public Improvements Act. Under the HRCA, landowners cannot object in the same way as under the Public Improvements Act. Cities have more flexibility issuing debt than do townships. The City would not require the Road Commission’s approval. If City and Township electors fail to vote to vacate, then the road repair will not be interrupted. In addition, before it vacates the City will be issuing debt to rehabilitate its sewer collection system anyway, so combining the road debt to it will possibly save transaction costs that the City would incur if it waits. Finally, the City will likely save other costs from vacating so that those other savings will offset the road repair cost. If the City wishes to repair the roads, it should follow the procedure under the MCL 117.14a of the HRCA.

## **CONCLUSION**

Townships do not have jurisdiction over roads. Once the City vacates its incorporation the City’s roads will revert to the Road Commission. The City does not have to first improve the

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<sup>21</sup> MCL 41.724.

<sup>22</sup> See MCL 41.726.

<sup>23</sup> MCL 41.735a; MCL 41.735b.

<sup>24</sup> The City would issue bonds by the authority granted in MCL 117.4a and under Chapter XVII of its City Charter.

roads before vacation because vacating is not the same as transferring under the Transfer of Jurisdiction over Highways Act (MCL 247.851 *et seq.*). The City is not required to bring the roads “up to reasonably acceptable standards.” Moreover, once the Road Commission receives jurisdiction of the roads after vacation, it likely cannot relinquish control of the roads to the Township. The County will be responsible for maintaining the roads.

Nevertheless, if the City decides that it wishes to repair the roads, it should issue debt before vacating. That outstanding road debt will be consolidated with other City debt into a special fund that the Township will administer. The fund will collect taxes from the territory of the former-City as if the City is still in existence until such time as the debt is paid.

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## **C-8: JOINT SEWER BOARD, SEWER RATES, WATER RATES**

### **KIRK, HUTH, LANGE & BADALAMENTI, PLC** **RESEARCH MEMORANDUM**

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#### **QUESTIONS PRESENTED**

1. The Paw Paw Lake Regional Joint Sewage Disposal Board serves four municipalities. Each municipality appoints two members to sit on the board. **If the City vacates its incorporation, will the unified Township acquire the City's representation on the board?**

**Short Answer:** **Probably yes.** When the City vacates its incorporation, the Township will acquire all of the City's assets, including the City's sewer system, and its interest in the interceptor. A person owning property with others as tenants in common has a right to convey his interest in the jointly owned property. The Township, therefore, will come to own a fifty-percent interest in the interceptor upon the City's vacation of incorporation. With the ownership should go the voting rights. The contract between the municipalities expires in five years. The best way for the municipalities to resolve this contract discrepancy is to amend the current contract or to enter into a new one, specifying that the unified Township will acquire the City's representation on the board. The Township and the City believe that Coloma will be receptive to an amendment.

2. The Township and the City use different charging methodologies for sewer rates. The Township charges residents a flat monthly rate (i.e. the residential equivalent unit). The City charges residents by actual water used. **Will the law permit the unified Township to charge customers using different methodologies, when the physical infrastructure of the two customer groups is separate?**

**Short Answer:** **Yes.** The law will permit the unified Township to use more than one charging methodology. Both charging methodologies are permissible under state and federal law. Federal grant law requires only that user charges are "proportionate." The conditions under federal grant law apply only if Watervliet (the City, the Township, or any affiliated wastewater treatment entity) received a grant. The user charges for the unified Township will be "proportionate" for two reasons. First, "proportionate share" does not require mathematical precision. Second, state and federal administrators agree that the unified Township would have proportionate charges if it used two different methodologies.

3. Two years ago, the Township and the City entered into a 20-year agreement related to water infrastructure. The Township sold ownership of its water system in consideration of the City's assumption of all operation and maintenance of the system at no cost to the Township. In the Agreement, the Township is charged a surcharge that decreases every year for twenty years, until the Township customers are paying the same rate as the City customers. After the City vacates, the unified Township will assume all of the City's assets, including its water system. **Will the unified Township continue this rate differential if the City vacates?**

**Short Answer:**       **Yes, for two reasons.** First, under Section 17 of the Agreement the unified Township would likely be a successor of the City. Second, Township and City representatives agreed to amend Section 17 to clarify any potential discrepancy so that the City and the Township would be considered explicit successors of one another.

4. **Will the City or the Township lose its SAW grant if the City decides to disincorporate?**

**Short Answer:**       **No.** According to Kelly Green, an SAW administrator for the State of Michigan, the unified Township would acquire the City's grant and its obligations. Moreover, the unified Township would not lose its SAW grant.

### LAW & ANALYSIS

1. **The unified Township will likely acquire the City's two representatives on the Paw Paw Lake Joint Sewage Disposal Board, but Watervliet should still negotiate with Coloma to remove any potential discrepancy.**

Representatives from four municipalities sit on the Joint Sewage Board: the City of Watervliet, the City of Coloma, the Township of Watervliet, and the Township of Coloma. Each municipality appoints two members to sit on the board. The municipalities own the interceptor as tenants in common. Each municipality owns its own respective sewer system (i.e. laterals and collectors). When the City vacates its incorporation, the Township will acquire all of the City's assets, including the City's sewer system, and its interest in the interceptor.

A person owning property with others as tenants in common has a right to convey its interest in the jointly owned property.<sup>1</sup> The township, therefore, will come to own a fifty-percent interest in the interceptor. With the ownership should go the voting rights. Further, the City, once it vacates, faces a "civil death," not unlike a natural one; it loses all rights, liberties, privileges, and franchises.<sup>2</sup> Just as an heir to stock has the right to vote in the name of the deceased, so too will the unified Township vote the City's share of the interceptor on the joint sewage board. *Billings v Marshall Furnace Co*, 210 Mich 1 (1920)(holding representatives of the deceased have

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<sup>1</sup> See *Wright v Kayner*, 150 Mich 7 (1907).

<sup>2</sup> McQuillin, *The Law of Municipal Corporations* (3 ed), p 167.

the right to vote with respect to stock standing on the corporate books in the name of the testator.)

Nevertheless, the contract between the four municipalities expires in five years.<sup>3</sup> The best way for the municipalities to resolve this contract discrepancy is to amend the current contract or to enter into a new one specifying that the Township will acquire the City's members. Both the Mayor of the City and the Township Supervisor believed that the City of Coloma and Coloma Township would be receptive to this amendment.

## **2. State and federal law permit using different charging methodologies for the unified Township customers.**

The Township and the City use different charging methods for sewer rates. The Township charges its customers using a flat monthly fee (i.e. residential equivalent units). The City charges its customers based on metered water flow.

Both of these methods are legal under Michigan law. Sewer charges are user charges, not taxes. A user charge is the price paid for a service provided by a municipality, which directly relates to the value of the individual use of the service and to the cost of producing the service.<sup>4</sup> If the user charge is designed to raise revenue for the general public, then the user charge is actually a tax.<sup>5</sup> The residential equivalent units charging method (i.e. REUs) is permissible because it approximates the cost of producing wastewater treatment service, and charges that cost to the customer. The metered flow method is equally permissible for the same reason.<sup>6</sup>

In this case, even though the City and the Township share the same interceptor (i.e. the largest sewer pipe that intercepts wastewater from the sewer system), they have separate sewer systems (i.e. separate lateral and collector pipes that connect to the interceptor). Because the municipalities have different sewer systems, the cost to produce the services differ. Therefore, the unified Township will be permitted to use different user charge methodologies under Michigan law.

These methods are legal under federal law, as well. The federal limitations on user charge methodologies come from federal government grant programs; specifically, the Grants for Construction of Treatment Works under the Federal Water Pollution Control Act ("Clean Water Act"). Only those municipalities that received federal grants under this program are bound by the grants conditions. It is unknown whether Watervliet was ever a grant recipient.<sup>7</sup>

One condition regarding user charge methodology under the Clean Water Act is that users of wastewater services pay their "proportionate share" of operations, maintenance, and

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<sup>3</sup> Joe Stepich, a Watervliet Township board member and member of the Paw Paw Lake Joint Sewage Treatment Plant Board, and Lloyd Taylor, the manager of the plant, went through mounds of paperwork to find if the Paw Paw Lake Joint Sewage Agreement or bylaws were ever amended. After their research, they found that the agreement was amended once in 1994. The topic of the amendment is irrelevant for our purposes. Thank you Joe and Lloyd.

<sup>4</sup> See, e.g., *Ripperger v Grand Rapids*, 338 Mich 682 (1954).

<sup>5</sup> See *Rouge Parkway Assoc v Wayne*, 423 Mich 411 (1985); *County of Jackson v City of Jackson*, 302 Mich App 90 (2013).

<sup>6</sup> The metered flow method more accurately approximates the cost of producing wastewater treatment services.

<sup>7</sup> "Watervliet" means the Township, the City, or any other affiliated wastewater treatment entity.

replacement costs. Under Section 204(b)(1)(A)<sup>8</sup> of the Clean Water Act, the EPA may approve a grant only upon the showing that the

“applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services *within the applicant’s jurisdiction, as determined by the Administrator, will pay its proportionate share* (except as otherwise provided in this paragraph) **of the costs of operation and maintenance (including replacement)** of any waste treatment services provided by the applicant; . . .” (Emphasis added).

The EPA has since phased out this construction grant program, but the grant conditions are still in effect as long as a grant recipient’s wastewater infrastructure is still operational.

The EPA wrote comprehensive regulations regarding this section of the statute.<sup>9</sup> Under 40 CFR §35.2140, “the user charge system must be designed to produce adequate revenues required for operation and maintenance (including replacement).” Moreover, a user charge system must provide that each user “pay *its proportionate share* of operation and maintenance (including replacement) costs of treatment works within the grantee’s service area.”

The Clean Water Act has always required user charge methodologies to be (1) self-sustaining and (2) proportionate. The “self-sustaining” requirement is not at issue here.

Assuming Watervliet received grant funding, the issue is whether the unified Township would still comply with the “proportionate share” requirement of the Clean Water Act by using two different user charge methods. The unified Township would comply with the “proportionate share” requirement for two reasons. First, the EPA has traditionally taken a flexible approach when evaluating the “proportionate share” requirement. Second, various administrators from the state and federal government all agreed that using two different charging methods would be proportionate in the unified Township’s case.

The EPA has traditionally used a very flexible means of considering what kinds of charging methodologies are proportionate. For example, a 35% overcharge is not disproportionate under the Clean Water Act. In *Hotel Employers Association v Gorsuch*, a hotelier lobby sued the EPA for not properly enforcing section 204(b) of the Clean Water Act, which requires that grant applicants charge users “its proportionate share.”<sup>10</sup> The EPA decided to not include run-off treatment in its calculation of “proportionate share,” so the hotels were paying more than 35% of actual share.<sup>11</sup> The Ninth Circuit held for the EPA because “Congress did not intend to impose an absolute proportionality requirement.” Instead, it was “primarily concerned with ensuring that treatment systems would be self-financing. . . .”<sup>12</sup> The Ninth

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<sup>8</sup> 33 USC 1284(b)(1)(A).

<sup>9</sup> The EPA revised these regulations when Congress passed the Water Resources Reform & Development Act of 2014 (“WRRDA”). While the EPA *did revise the text of the regulations* after WRRDA, Congress *did not revise the text of the statute*. Nevertheless, the essence of the revised regulations appears to be a distinction without difference for our purposes. The old EPA regulations were found at 40 CFR 35.929-1 through 35.929-3. While this construction grant program has been phased out, the “proportionate share” user charge requirement is still in effect for entities that received grant funding. We are not certain whether any of the City’s or Township’s wastewater infrastructure received grant funding.

<sup>10</sup> 669 F2d 1305 (1982).

<sup>11</sup> *Id* at 1307.

<sup>12</sup> *Id* at 1308.

Circuit explained that the EPA “was tolerant of local variation in user charge schemes so long as this basic requirement was met.”<sup>13</sup> Localities were not required to apportion the costs to mathematical precision; instead, they were given “flexibility in designing user fee systems.”<sup>14</sup>

We derive a second point from the *Hotel Employers Association* case. The law grants the EPA tremendous discretion in determining when charging methodologies are and are not proportionate. The EPA’s determination will be upheld so long as they have a rational basis for it.<sup>15</sup> This rational basis could derive from the fact that the two sewer systems are structurally distinct; or from the fact that the current Township system is not a metered system. The Township will not be required to adopt meters if the City vacates because “proportionate share” does not require mathematical precision.<sup>16</sup>

Moreover, unlike the *Hotel Employers Association* case, the government administrators here all agree that using two charging methodologies would be fair. Andy Bielanski, from EPA Region 5, said that so long as the charges are high enough to make the system self-sustaining and the charges were fair and equitable, they would be permissible. He gave an example of a sewer system in Chicago that recently revamped its user charges because of shifting populations. The EPA authorized the Chicago user charge changes because the changes were fair.

Eric Governo, Attorney-Advisor of the Office of Wastewater Management at EPA headquarters, provided a copy of an EPA guidance manual titled “User Charge Guidance Manual for Publicly-Owned Treatment Works.” On page 11 of this guidance manual, the EPA writes:

The user charge systems adopted by individual participating municipalities may differ from that of the grantee as long as the charges to the end users are proportionate and the systems comply with the user charge regulations.

Under MCL 117.14a, the City will exist as a de facto city for the purposes of obligations, including, arguably, grant obligations. Therefore, because the EPA permits participating municipalities to adopt different user charge systems, both systems will remain in compliance if the merger is successful. Eric Governo agreed that if the state government was amenable to this concept, then the EPA would be as well.

State administrators Robert Schneider of the Michigan Department of Treasury, Mark Conradi of the State Revolving Fund, and Kelly Green of the SAW Grant program all agreed that using two different charging methodologies would be permissible.

Finally, to comply with the construction grant conditions, the unified Township will have to pass a user charge and system use ordinance that spells out the proportionate share requirement. 40 CFR §35.2208. The EPA mandates that local ordinances enumerate this requirement.

In sum, the unified Township would be able to charge its customers by using two different methodologies. Proportionate share does not require mathematical precision. Government administrators all agree that the unified Township would be permitted to use two charging methodologies. Assuming Watervliet received Construction for Treatment Works grant funding, the unified Township would be required to pass an ordinance requiring users pay their

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1309.

<sup>15</sup> *Id.* at 1310.

<sup>16</sup> *Id.* at 1308.



proportionate share.<sup>17</sup> This new ordinance should incorporate the current ordinances for both the Township and the City.

**3. The rate differential in the Water Agreement will likely continue because (1) Section 17 of the Agreement and (2) the communities will likely amend the Agreement to remove any potential discrepancies.**

Two years ago, the Township and the City entered into a 20-year agreement related to water infrastructure. The Township sold ownership of its water system in consideration of the City's assumption of all operation and maintenance of the system at no cost to the Township. In the Agreement, the Township is charged a surcharge that decreases every year for twenty years, until the Township customers are paying the same rate as the City customers. The question is whether the rate differential would continue after the City vacates.

It is most likely that the rate differential would continue. On one hand, once the City vacates, it is impossible for the City to perform. The Agreement would then be void. On the other hand, Section 17 of the Agreement says that it is "binding upon all successor governmental units of the Township and City which may . . . become vested by law with the right to control the use of the water system. . . ." Section 17 can be reasonably interpreted to mean that the unified Township would be bound by the Agreement because it would be a "successor governmental unit of the City."

The Agreement often refers to "Township water customers" and "City water customers." A distinct argument for the Agreement's enforceability is that "City water customers" are third-party beneficiaries of the Agreement and that they should continue to pay the rate lower than Township water customers.

Regardless of the correct interpretation of the Agreement, the best course of action is to amend Section 17 of the Agreement to clarify that "successor governmental units of the Township and the City" under Section 17 includes both the City and the Township. If the City vacates its incorporation, then the Township would be a "successor governmental unit of the City."

**4. Neither the Township nor the City will lose its SAW grant funding if they decide to go through with the unification. State Revolving Fund funding will also be unaffected.**

According to Kelly Green, an SAW administrator for the State of Michigan, the unified Township would acquire the City's grant and its obligations. Moreover, the unified Township would not lose its SAW grant.

Additionally, Mark Conradi, an administrator of the SRF program, agreed that neither the Township nor the City would lose any eligibility under the SRF program.

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<sup>17</sup> 40 CFR §35.2208.